

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1490

APPENDIX FOR APPELLANT

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

DOCKET NO. 76-1490

UNITED STATES OF AMERICA,

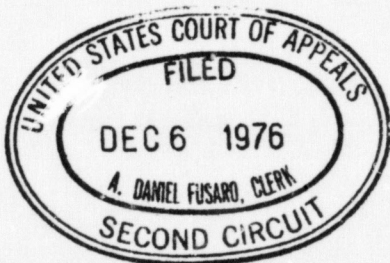
Plaintiff-Appellee,

-against-

MARION E. MEADOWS,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT



WILLIAM S. HERRMANN  
Attorney for Defendant-Appellant  
16 Oak Street  
Stamford, Connecticut 06905  
Tel.: (203) 327-9988

PAGINATION AS IN ORIGINAL COPY



APPENDIX FOR APPELLANT

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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DOCKET NO. 76-1490

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

MARION E. MEADOWS,

Defendant-Appellant.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
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WILLIAM S. HERRMANN  
Attorney for Defendant-Appellant  
16 Oak Street  
Stamford, Connecticut 06905  
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DIST/OFFICE	YR.	NUMBER	MO.	DAY	YEAR	J	N/D	23	\$	OTHER	NUMBER	DEM.	YR.	NUMBER
205-3	N	76-342	10	05	76	1	690	1			0507 RCZ		N	76-342

PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

MARION E. MEADOWS

CAUSE RE: GRAND JURY PROCEEDINGS  
Application for Order to compel  
handwriting samples and Motion to Quash  
Subpoena

Peter C. Dorsey  
Peter A. Clark  
270 Orange Street, P.O. Box 1824  
New Haven, Conn. 06508

ATTORNEYS William S. Herrmann  
16 Oak Street  
Stamford, Conn. 06905

☐ CHECK  
HERE  
IF CASE WAS  
FILED IN  
FORMA  
PAUPERIS

DATE

10/12/76

FILING FEES PAID

RECEIPT NUMBER

55176

\$5.00 (Appeal)

C.D. NUMBER

STATISTICAL CARDS

CARD

DATE MAILED

JS-5

JS-6

DATE 1976	NR.	PROCEEDINGS
10/5		<p style="text-align: center;">Oral</p> <p>Hearing on/Motion to Quash Subpoena re exemplars. Affidavit of Peter A. Clark, filed. Court overrules objection of witness to the reasonableness and relevancy of the witnesses's appearance before the Grand Jury. Motion to Quash is denied, on the condition that comparison between the exemplars and the note not be made until further order of this Court. Witness is orally ordered to give exemplars before the Grand Jury. Court stands in recess 3:15 - 4:00 P.M. Hearing re contempt. Application for Order to Compel Handwriting Samples and Major case prints (fingerprints), filed by Government. Affidavit of Peter A. Clark in support thereof, filed. Grand Jury Foreman Mr. Bitgood, sworn and testified. Order filed and entered that witness provide handwriting exemplars to Grand Jury. Judge remains on bench while witness is presented before the Grand Jury. At 4:15 P.M. Government informs the Court that witness has again refused to provide exemplars. Grand Jury foreman returns to stand and testifies further. Court finds witness in contempt and orders he be incarcerated for the life of the Grand Jury (impanelled on 9/27/76) unless he purges himself of the court order. Witness's motion for a stay pending appeal is granted until Oct. 12, 1976 at 10:00 A.M. at which time witness must appear before this court. Court adjourned at 4:30 P.M. Zampano, J. M-10/6/76</p>
10/7		<p>Court Reporter's transcript of proceedings of October 5, 1976, filed. Russell, R.</p>
10/8		<p>Court Reporter's Notes of Proceedings of October 5, 1976, filed. Russell, R.</p>
"		<p>Notice of Appeal filed by witness. Copies mailed to counsel. Copy mailed to Court of Appeals.</p>
10/12		<p>Hearing on Motion to Stay. Stay is continued until Nov. 1, 1976, at 12:00 P.M. at which time the defendant shall present himself to the U.S. Marshal for commitment during the life of the Grand Jury unless he purges himself of the contempt order prior thereto. Any further stays must be obtained from the U.S. Court of Appeals. Court reorders witness to appear before Grand Jury to give handwriting exemplars and fingerprints in the manner requested by Grand Jury foreman, for comparison with the withdrawal slip. Court reserves decision on whether the handwriting exemplars and fingerprints can be compared to the note confiscated by F.B.I. Agents. Court adjourned in this matter at 10:47 A.M. Newman, J. M-10/12/76</p>



CIVIL DOCKET  
UNITED STATES DISTRICT COURT

Jury demand date:

Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

IN RE: MARION MEADOWS  
(Grand Jury Proceedings)

For plaintiff:  
Peter C. Dorsey  
Peter A. Clark  
270 Orange Street  
P. O. Box 1824  
New Haven, Conn. 06508

For defendant:

STATISTICAL RECORD

COSTS

DATE

NAME OR  
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed

Clerk

J.S. 6 mailed

Marshal

Basis of Action: **Grand Jury**  
**Proceedings**

Docket fee

Witness fees

Action arose at:

Depositions



DATE	PROCEEDINGS	Date of Judgment
1976		
10/1	Motion for Capias, filed.	
"	Capias issued. Newman, J. Attested copies handed to the	
10/4	Marshal for service. Copy to U.S. Attorney. M-10/4/76	
10/5	Marshal's Return Showing Service, filed - Capias	
	Non-surety bond in the sum of \$2,000. filed by witness	
	Marion Meadows.	
10/12	Hearing held on Motion to Stay before Newman, J.	
	Stay is continued to November 1, 1976 at 12:00 P.M. at which time	
	the def't shall present himself to the U.S. Marshal for commitment	
	during the life of the Grand Jury unless he purges himself of	
	contempt order prior thereto. Any further stays must be obtained from	
	the U.S. Court of Appeals. Court re orders witness to appear before	
	Grand Jury to give handwriting exemplars and fingerprints in the manner rec	
	by G.J. Foreman, for comparison with the withdrawal slip. Court	
	reserves decision on whether the handwriting exemplars and fingerprints	
	can be compared to the note confiscated by F.B.I. Agents. Court Adjourned	
	10:47 A.M. Newman, J. M-10/12/76.	
10/8	Notice of Appeal, filed by Witness	

SEE CIVIL ACTION NO. N 76-342

government. The implication of judicial remedies to provide this shield follows naturally from the declaration of the right. And this was in Grand Jury Proceedings.

Now, I see no harm in -- Tuesday -- going through this question on the illegality. Because if the search is illegal and if these documents cannot be used, I intend to move to suppress them. They will have nothing to compare it to at all. Right now the grand jury foreman has nothing anyway, but he'll certainly have nothing and the whole matter will be academic.

I think it's unfair at this point to hold this man in contempt and coerce him and twist him and punch him and so on before we've had our full day in court. After we've had our full day in court, that's a different ballgame.

THE COURT: The issue at the present time is not whether or not the Court should have signed the order. The order has been signed. The question is has he willfully and knowingly violated the Court's order. It is crystal clear that he has. There is no indication that he did not understand the order, there is no indication that he misinterpreted the order, and there is every indication that he willfully violated the order.

Therefore, I find him in contempt. I order him to be confined during the life of this grand jury unless he purges himself of the contempt order prior thereto.



What is the life of the grand jury?

MR. CLARK: The grand jury first sat, believe, on September 27th, your Honor. It would be 18 months from that date.

THE COURT: That is the Court's order.

MR. HERRMANN: May I have an exception on the record to that, your Honor? And I would like to file an appeal on it and request a stay until I file the appeal.

THE COURT: Mr. Clark?

MR. CLARK: I don't think a stay would be appropriate, your Honor.

THE COURT: I will order a stay until the witness has an opportunity to present the matter to the Court of Appeals, which, I take it, can be done within the next few days. Certainly, it would seem to me, by Monday.

Therefore, I will order a stay of the Court's order until ten o'clock Tuesday of next week, October 12th, at which time the defendant shall present himself in court not only for the hearing which is scheduled, but also to submit himself to the marshals, unless he purges himself or unless the Court of Appeals sets the order of the Court aside.

The stay is granted until ten o'clock, Tuesday, October 12th, at which time the defendant shall present himself in this courtroom.

-00000-

SANDERS, GALE & RUSSELL  
Certified Stenotype Reporters

664 PROSPECT AVENUE  
HARTFORD, CONNECTICUT

141 CHURCH STREET  
NEW HAVEN, CONNECTICUT

6

of cut-out pieces. But, all right, they say it was writing. But in any event, the note has a very, very serious constitutional question involved, concerning the note. Assuming that what they say about the withdrawal slip is true, and going further, without admitting anything, just assuming that they are on solid ground with their withdrawal slip, it has no handwriting on it. Now you're going to order a fellow to give a handwriting for something that has no handwriting on it.

THE COURT: They may ask for numbers. I don't know.

MR. HERRMANN: Well, then, I should think the order would -- you know, would reflect that, your Honor.

THE COURT: I am certain that the Third Circuit did not -- even the Third Circuit did not intend for me to have a plenary, full-blown hearing of the government's evidence. I am satisfied -- and I am not going to change my ruling -- that this affidavit before us, plus the oral statements made by an officer of this court, are sufficient for me to deny the motion to quash, and I so deny it, with the condition that the comparison between the exemplars so ordered and the note not be made until further order of the Court.

Now, that is the ruling of the Court. It is done. It is completed. Your objections are noted. I think the record is crystal clear as to the issues and I think it would be



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE: JOHN DOE

:

NO. \_\_\_\_\_

MOTION FOR CAPIAS

The United States of America moves that a capias issue for one MARION MEADOWS, who was subpoenaed as a witness before the Grand Jury, sitting at New Haven, on September 27, 1976, and failed to obey the said subpoena. In support of this Motion the United States of America represents:

1. Marion Meadows was subpoenaed to appear and did appear before a Grand Jury at Hartford, Connecticut on September 17, 1976, the purpose of said appearance being to obtain fingerprints and handwriting samples from the said Marion Meadows. Mr. Meadows appeared with Attorney William Herrmann of Stamford, Connecticut.

2. Mr. Meadows appeared before said Grand Jury and was ordered to provide fingerprints and handwriting exemplars at which time he refused.

3. Marion Meadows was thereupon taken into open court at which time Chief Judge Clarie signed an order compelling him to provide handwriting samples and fingerprints to the Grand Jury. A copy of this Order is attached hereto as Exhibit 1.

4. Marion Meadows was then returned to the Grand Jury and again directed to provide fingerprints and handwriting samples in response to the Order issued by Judge Clarie. Mr. Meadows again refused to provide said evidence.

5. Since the Grand Jury sitting in Hartford expired as of that day no further action was taken with respect to compelling the production of the evidence requested. Mr. Meadows was, however, served a subpoena on the afternoon of September 17, 1976 in the presence of his attorney, William Herrmann which subpoena called for his attendance before a Grand Jury in New Haven on September 27, 1976.

6. On September 27, 1976 Marion Meadows failed to appear before the Grand Jury in New Haven as directed. On September 28, 1976 the undersigned called William Herrmann, Marion Meadows' attorney, and inquired if Mr. Meadows had any justification or excuse for his failure to appear on the 27th of September. In response to that direct question Mr. Herrmann stated "No comment". "All I can say, is no comment".

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE JOHN DOE

: NO.: \_\_\_\_\_

C A P I A S

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO: The United States Marshal for the District of Connecticut, or any of his Deputies, G R E E T I N G S:

It appearing from the Motion of the United States of America that MARION MEADOWS was duly subpoenaed to appear before the Grand Jury at New Haven on September 27, 1976, and that the said MARION MEADOWS has failed to appear as required,

NOW, THEREFORE, YOU ARE COMMANDED to arrest MARION MEADOWS of 51 Bonner Sreet, Stamford, Connecticut, and bring him forthwith before this Court at New Haven, there to be dealt with according to law.

Dated at New Haven, Connecticut, this \_\_\_\_\_ day of \_\_\_\_\_, 1976.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE



# United States District Court

BEST COPY AVAILABLE

FOR THE

District of Conn.

UNITED STATES OF AMERICA

APPEARANCE BOND

*In re*  
*Marion F. Meadows*

MISC.

FOR

No. *N. H. 116*

*Witness*  
Non-surety ☒ I, the undersigned defendant, acknowledge that I and my  
Surety ☐ We, the undersigned, jointly and severally acknowledge that we and our

personal representatives, jointly and severally, are bound to pay to the United States of America the sum of \$ *2,000.00* and there has been deposited in the Registry of the Court the sum of \$ \_\_\_\_\_ in cash ☐ or \_\_\_\_\_, (describe other security) ☐ a sum not exceeding 10% of the amount of the bond.<sup>1/</sup>

The conditions of this bond are that the defendant *Witness Marion Meadows*

is to appear before \_\_\_\_\_, United States Magistrate for the  
United States District Court for the District of *Conn.* at  
*New-Haven*, and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in the above entitled matter as may be given or issued by the magistrate or by the United States District Court for the District of *Conn.* or any other United States District Court

*Witness*  
If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any United States District Court having cognizance of the above entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such United States District Court against each debtor jointly and severally for the amount above stated, together with interest and costs, at execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States. *Witness is to appear at New Haven on 10/5/76 at 10 A.M. pursuant to existing subpoena.*

It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

This bond is signed on this *4th* day of *October* 19 *76*

at *New Haven, Conn.*

Name of Defendant *Marion F. Meadows* Address *3168 Main St, New Haven, Ct.*

Name of Surety \_\_\_\_\_ Address \_\_\_\_\_

Name of Surety \_\_\_\_\_ Address \_\_\_\_\_

Signed and acknowledged before me this *4th* day of *October* 19 *76*

Approved:

*A. H. T.*  
*U.S. Magistrate*

*Arthur H. Latimer*  
*U.S. Magistrate*

<sup>1/</sup>Where no deposit is required delete the remainder of this paragraph.  
<sup>2/</sup>Where no sureties are required, indicate full amount of cash deposited in registry.  
<sup>3/</sup>If a form of security other than cash is deposited, describe.  
<sup>4/</sup>If the amount ordered to be paid exceeds 10 percent of the bond, state the amount.  
<sup>5/</sup>Insert place

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE:

MARION MEADOWS

APPLICATION FOR ORDER TO COMPEL HANDWRITING  
SAMPLES AND MAJOR CASE PRINTS (FINGERPRINTS)

PETER A. CLARK, Assistant United States Attorney, District of Connecticut, acting for and with the approval of Peter C. Dorsey, United States Attorney for the District of Connecticut, hereby makes application for an order compelling MARION E. MEADOWS to furnish handwriting samples and major case prints (fingerprints) to the Grand Jury sitting at New Haven, in the District of Connecticut, on October 5, 1976. This application is based on the attached Affidavit of Peter A. Clark and any oral or documentary evidence presented at any hearing related hereto.

Respectfully submitted,

PETER C. DORSEY  
UNITED STATES ATTORNEY

BY: PETER A. CLARK  
ASSISTANT UNITED STATES ATTORNEY

Dated at New Haven, Connecticut  
this ~~6th~~ day of October, 1976.

//



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE:

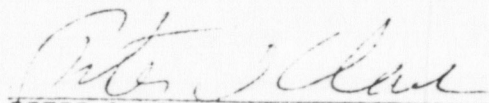
MARION MEADOWS

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER COMPELLING WITNESS  
TO PROVIDE HANDWRITING SAMPLES AND MAJOR CASE PRINTS (FINGERPRINTS)

I, PETER A. CLARK, being duly sworn, depose and say:

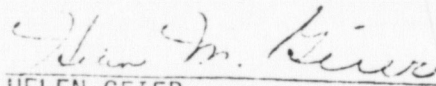
1. I am an Assistant United States Attorney for the District of Connecticut.
2. I am acting for and with the approval of Peter C. Dorsey, United States Attorney for the District of Connecticut.
3. As part of my official duties, I am conducting proceedings before the Federal Grand Jury sitting at New Haven, Connecticut, which Grand Jury is inquiring into possible violations of Federal criminal statutes, including, but not limited to, Title 18, United States Code, Section 2113 (bank robbery).
4. Marion E. Meadows was subpoenaed to appear and did appear before the Grand Jury on October 5, 1976 at which time he was directed to give and provide handwriting samples and major case prints (fingerprints).
5. Marion E. Meadows acting with advice of counsel refused to give or provide handwriting samples or major case prints to the Grand Jury as directed. His refusal was based on claims under the Fourth and Fifth Amendments of the Constitution of the United States.
6. The handwriting samples and major case prints are essential and necessary to the Grand Jury investigation and are to be used only as a standard of comparison in order to determine whether or not Marion E. Meadows participated in the robbery of the Union Trust Co., High Ridge Branch, 1211 High Ridge Road, in Stamford, Connecticut, on August 3, 1976.

A handwritten note and a handwritten withdrawal slip were used by the individual who robbed the bank. In addition, latent prints of value were developed in the bank during the investigation of the bank robbery.



PETER A. CLARK  
ASSISTANT UNITED STATES ATTORNEY

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of October, 1976.



HELEN GEIER  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: 3/31/80



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE: :  
MARION MEADOWS :  
:

A F F I D A V I T

STATE OF CONNECTICUT: :  
: ss. New Haven - October 5, 1976  
COUNTY OF NEW HAVEN :

PETER A. CLARK, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the District of Connecticut and in the performance of my duties I am investigating the robbery of the Union Trust Company, High Ridge Branch, 1211 High Ridge Road, Stamford, Connecticut, on August 3, 1976. Agents of the Federal Bureau of Investigation have advised me that their investigation has determined that said Bank is insured by the Federal Deposit Insurance Corporation and a handwritten note and a handwritten withdrawal slip were used by the lone male individual who robbed said Bank. Agents of the Federal Bureau of Investigation have further advised me that latent prints of value were developed in the Bank during the investigation of said bank robbery.

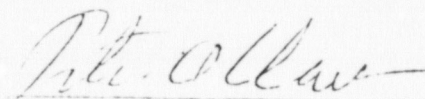
2. On October 4, 1976, I caused a subpoena to be served upon Marion Meadows to appear before the Grand Jury sitting at New Haven, Connecticut on October 5, 1976. The purpose of said subpoena was to acquire from Mr. Meadows major case fingerprints and handwriting exemplars.

3. These fingerprints and handwriting exemplars are to be used as a standard of comparison against fingerprints developed in the Bank and the handwritten notes used in the robbery which have been re-

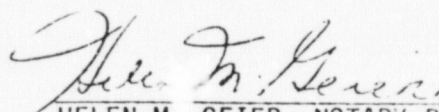
covered by the Federal Bureau of Investigation. The exemplars will be used for no other purpose.

4. Bank robbery is a federal offense and within the jurisdiction of a Federal Grand Jury. The Federal Grand Jury now sitting in New Haven, and to which Marion Meadows has been subpoenaed, is conducting an investigation to determine if Marion Meadows was involved with the robbery of the said Bank on the said date.

5. For all of the foregoing reasons I am of the opinion and belief that the information sought from Marion Meadows is relevant to an investigation being conducted by the Grand Jury and relates to a matter that is properly within the jurisdiction of the Federal Grand Jury.

  
PETER A. CLARK

Subscribed and Sworn to before me  
this 5th day of October, 1976.

  
HELEN M. GEIER, NOTARY PUBLIC  
(My commission expires 3/31/80)



MICROFILM

OCT 6 1976  
NEW HAVEN

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE:

MARION E. MEADOWS

ORDER COMPELLING HANDWRITING SAMPLES  
AND MAJOR CASE PRINTS (FINGERPRINTS)

United States District Court  
District of Connecticut

FILED AT NEW HAVEN OCT 5 4:12 P.M.

By: *[Signature]* Clerk

Deputy Clerk

*[Signature]*

*[Signature]*

On application of Peter A. Clark, Assistant United States Attorney,  
acting for and with the approval of Peter C. Dorsey, United States Attorney  
for the District of Connecticut:

And it appearing to the satisfaction of the Court:

1. Marion E. Meadows was subpoenaed on October 5, 1976, before a duly constituted Grand Jury of the District of Connecticut sitting at New Haven, Connecticut.
2. That the Grand Jury is now investigating possible violations of Federal law, including but not limited to, Title 18, United States Code, Section 2113 (Bank Robbery).
3. That Marion E. Meadows was requested and directed by the Grand Jury to provide handwriting samples and major case prints.
4. That Marion E. Meadows (acting with advice of counsel) has refused to provide handwriting samples of major case prints on the basis of the Fourth and Fifth Amendments to the Constitution of the United States.
5. That in the judgment of the United States Attorney and Peter A. Clark, Assistant United States Attorney, handwriting samples and major case prints are essential and necessary to the Grand Jury investigation.

NOW, THEREFORE, IT IS ORDERED that the said Marion E. Meadows give  
and provide handwriting samples as requested by the Grand Jury.

Robert C. Zampant  
UNITED STATES DISTRICT JUDGE

Dated: October 5, 1976  
4:12 P.M.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X

In the Matter of:

Grand Jury Proceedings

Re: MARION MEADOWS.

Misc. NH-116

-----X

United States Court House  
New Haven, Connecticut  
October 5th, 1976

Before:

Hon. ROBERT C. ZAMPANO, U.S.D.C.

Appearances:

For the Petitioner:

WILLIAM S. HERRMANN, Esq.  
16 Oak Street  
Stamford, Connecticut

For the Government:

PETER A. CLARK, A.U.S.D.A.  
270 Orange Street  
New Haven, Connecticut

SANDERS, GALE & RUSSELL  
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET  
HARTFORD, CONNECTICUT

141 CHURCH STREET  
NEW HAVEN, CONNECTICUT

18

1  
2  
3 MR. CLARK: Good morning, your Honor.

4 THE COURT: Good morning.

5 MR. CLARK: This matter does have a miscellan-  
6 eous civil number inasmuch as a alias has been issued that would  
7 be Miscellaneous New Haven 116.

8 Mr. Marion Meadows is in court this morning  
9 appearing pursuant to a subpoena which was issued for him to ap-  
10 pear at the grand jury. It is the government's intention to have  
11 Mr. Meadows appear before the grand jury and request of him fing-  
12 erprints and handwriting exemplars and to have the grand jury  
13 order the production of those items if necessary.

14 Prior to having Mr. Meadows appear before the  
15 grand jury his attorney, William Herrmann, who is here in court  
16 with advises that he wishes to move to quash the subpoena.

17 THE COURT: May I have a look at the subpoena,  
18 please? Very well, what would you like to say, Mr. Herrmann?

19 MR. HERRMANN: Good morning, your Honor.

20 THE COURT: Good morning.

21 MR. HERRMANN: This is not the first time, your  
22 Honor, that we have been in federal court on this matter. As a  
23 matter of fact, I think this is the fourth subpoena. We appeared  
24 the first time in August pursuant to a subpoena in this court  
25 house and there was no -- nobody here. I appeared with Mr.  
Marion, sitting over there. There was nobody here. I had the



clerk receipt the subpoena that we appeared. And we were told that we were to come back maybe September 7th or September 8th, but the clerk wasn't sure which day and we'd be notified. We were not notified. September 7th I got a telephone call from a man who identified himself as an FBI agent wanting to know why we weren't here and I told him we had had no notice of it. We were to'd we were going to be notified. We were never notified of anything.

Subsequent thereto another subpoena was issued, served on Mr. Meadows, not for New Haven, but for Hartford -- and we're in Stamford. We went to Hartford. When we got to Hartford Mr. Meadows was called into the grand jury room and he was told -- he was asked for handwriting specimens and fingerprints. We then appeared before Judge Clarie, and the grand jury foreman was put on the stand to testify that he asked Mr. Meadows for the material and that Mr. Meadows had refused. I then cross-examined him, and on cross-examination it developed that they had -- the grand jury had no papers to compare this specimen with; that the affidavit was made by the Assistant U. S. Attorney. He doesn't say in his affidavit that he has the papers either, but when the grand jury chairman was put on the stand I examined him, I asked him in substance -- I ordered a transcript of it which I haven't received yet, which I need for a full hearing on this -- I asked him, "Do you have anything in your possession, custody or control

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which would appear to be a note such as referred to -- was for a holdup of a bank, anything of that nature?" he said no. I asked him if he ever saw such a writing. he said no. I asked him if he had any fingerprints or photographs or copies of any information regarding any of this. His answer was no.

So it ended up basically that the grand jury didn't even know what was going on. They had nothing to make any comparison with. Nevertheless, Judge Clarie ordered Mr. Meadows to give the handwriting specimen.

Now, at that point when he ordered him to give the handwriting specimen, we were told to wait -- Mr. Meadows and I. This was somewhere around two-thirty in the afternoon. We were compelled to wait in the federal court house in Hartford until four-thirty in the afternoon, never called back into the grand jury room, and then at four-thirty we were told to leave. And while we were waiting, another subpoena was served.

Now, what I'm driving at is here's a man. He's sitting there waiting to be called back into the grand jury room. They don't call him back in and they serve him with a another subpoena. Now they issue a capias on him. They bring him into the court here yesterday when there was no grand jury here. There was no grand jury here. I don't know what the capias was for yesterday. And in the motion and in the affidavit for the capias there's a serious error in paragraph 4. It says "Marion Meadows



1 5

2 was returned to the grand jury and directed to provide finger-  
3 prints and handwriting samples in response to the order issued by  
4 Judge Clarie. Mr. Meadows again refused to provide said evidence."

5 That's not true. He never was called back.

6 They just let us sit there for two hours and then told us to  
7 leave. And now yesterday when Mr. Meadows was brought here on a  
8 capias, he's in custody, he's here on a capias, which means he's  
9 brought here, as I understand it, to try to compel him to testify,  
10 and they don't -- but they serve him with another subpoena.

11 Incidentally, the subpoena has no date on it. It doesn't say  
12 upon whose application it's issued -- this one yesterday -- it  
13 says the subpoena's issued on the application of blank, and down  
14 on the bottom the date is blank.

15 Now, my contention is that, first, this is not  
16 a legitimate grand jury investigation. This is harassment. It's  
17 one thing after another of harassing this fellow. And I have my --  
18 my investigation would indicate to me, in addition to my cross-  
19 examination of the grand jury foreman in the Hartford federal  
20 court -- that they don't have any writing to compare it with.  
21 My investigation reveals that the so-called note that was used  
22 was made up from pieces cut out of newspapers and magazines,  
23 letters that were cut out of newspapers and magazines, that there  
24 was no handwritten note, and I'm asking your Honor at this time  
25 for a hearing on this matter where I can develop this to show

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that this is not a legitimate grand jury hearing, this is harassment. If anything, is a possible FBI investigation, but that it's not a grand jury hearing, and that there is no note.

Up to now, the evidence on record -- and I would request that I have time to get that transcript; I ordered it the day I was there, but they haven't given it to me yet -- shows that there isn't any.

THE COURT: In what respect does your argument this morning differ from the one presented to Judge Clarie, other than the fact that you are claiming harassment? Because he was brought here twice without being called, other than that argument, how does your argument on the law differ from the one that Judge Clarie apparently overruled?

MR. HERLMANN: Because at the time I argued before Judge Clarie I didn't have the research done to find this case, which I think is a very important case, and I would like to have an opportunity to put the whole thing into brief form for the Court, but the case is In Re: Grand Jury Proceedings that was argued in the United States Court of Appeals for the Third Circuit and it's reported in 486 Federal 2nd at page 85, and it was reported in -- decided September 11th, 1973, which I mention is subsequent to the decision of U. S. against Mara which the U. S. Attorney's office seems to rely so heavily on, although Mr. Clark didn't bring it up today, but I know that's what Mr. Clark relies



relies so heavily on. And this case goes into this matter quite thoroughly, and they say that the Court is not by any means just a rubber stamp for the prosecutor's office in issuing these subpoenas. And they tell you that subpoenas are issued pro forma, anybody -- anybody who wants one, practically -- any attorney who wants one, practically can get one from the court and they'll sign it and stamp it and send it out. And that there's no opportunity to oppose this in advance because it just goes out as a matter of ministerial act. And that the Court should look into it and that it's just not cut and dried, as the prosecutor tries to make it appear by U. S. against Mara. And that they must show the reasons for it. And that they analogize it to subpoenas issued by federal administrative agencies. And that there are various defenses which may be presented.

THE COURT: I have read In Re: Grand Jury Proceedings that you have called to my attention, a ruling by the Third Circuit.

MR. HERRMANN: May I just invite your Honor's attention to a few special points in that opinion?

On page 91 in the left-hand column the Court states: "But Gelbhart against the United States --" with the citation "-- makes clear that Court's determination under the statute of the existence or nonexistence of just cause for refusing to obey a subpoena entails the same full judicial consider-

2 ation as in the administrative subpoena cases. Indeed, Gelbhart  
3 holds that because a grand jury witness does not have an oppor-  
4 tunity prior to his appearance to file appropriate motions ad-  
5 dressed to his subpoena, the statute must be construed as afford-  
6 ing him the opportunity of presenting all defenses properly avail-  
7 able to him." And then they go into the various defenses which  
8 are available. And then in the right-hand column at the top they  
9 say, "In the grand jury context," and so on. They go down. But  
10 they say that -- going over to the next page, excuse me, the  
11 page -- 92 in the right-hand column at the top here, "The admin-  
12 istrative subpoena cases give guidance on that problem for courts  
13 have recognized that a party seeking to show an abuse of subpoena  
14 process can use discovery proceedings to meet this burden."

15 Then they go into the fact that the grand jury  
16 proceedings are secret, but that is not -- that doesn't completely  
17 dispose of the problem. That in -- in proper cases there will  
18 have to be disclosure. There already has been, although I don't  
19 have the record of it.

20 THE COURT: What would you like to say, Mr.  
21 Clark?

22 MR. CLARK: I would just like to reiterate a  
23 brief history of the matter, your Honor.

24 With respect to the first subpoena that was  
25 issued, I believe it was for August 29th or a date thereabout.



between the issuance of that subpoena and the date of -- that it was initially set for, the grand jury was cancelled for some reason. I don't recall. A letter was sent to the address that we had for Mr. Meadows -- he says he did not receive it -- and therefore appeared pursuant to that subpoena, at which time I believe he spoke to Miss Consiglio.

THE COURT: What did the letter say?

MR. CLARK: It set the date forward to September 7th for the next appearance. As a result, there was not an appearance on the 7th. That was not considered a major problem by us. We simply issued another subpoena for September 17th in Hartford.

Mr. Meadows went to Hartford pursuant to that subpoena. He was taken before the grand jury. The grand jury ordered the handwriting. He refused to give it. He was taken before Judge Clarie, who issued the order, and Mr. Meadows was then taken back, and not actually presented to the grand jury, however, he was brought by an Assistant U. S. Attorney to the very door of the grand jury room at which time he and his attorney, as I understand it, indicated an intention not to provide the requested exemplars. At that point Mr. Meadows was handed another subpoena for an appearance on October -- pardon me, September 27th in New Haven, and simply did not appear for that grand jury.

The next day we applied for a capias as a re-

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sult of that nonappearance. Mr. Meadows was arrested on the strength of the capias and was brought here yesterday, at which time he was again subpoenaed to appear today.

It's our intention to ask Mr. Meadows before the grand jury to provide handwriting and fingerprints.

The government would rely on United States versus Dionisio and United States versus Mara, which are in 410 United States at pages 1 and 19, I believe.

THE COURT: Are you familiar with In Re: Grand Jury Proceedings in the Third Circuit which distinguishes those two cases?

MR. CLARK: I am not, your Honor. But from the tone of counsel's argument I would assume that it may have something to do with a wiretap claim. I may be wrong.

THE COURT: No. It says that the government sought handwriting exemplars, fingerprints and a mug shot from the witness. The Court goes on. "Authority for obtaining them exists, if at all, solely because they are somehow relevant to the grand jury's investigation of an offense falling within its jurisdiction. In view of the fact that the information which would justify obtaining the handwriting exemplars, fingerprints and mug shot is in the government's sole possession, we think it is reasonable that the government be required to make some preliminary showing by affidavit that each item is at least relevant

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to an investigation being conducted by the grand jury and properly within its jurisdiction and is not sought primarily for another purpose." It is a case that says that -- and more. It goes on to distinguish Dionisio and Mara.

I suggest, Mr. Clark, that that case be read by you, because, among other things I mentioned, it also quotes Judge Friendly in a Second Circuit case for support.

MR. CLARK: If your Honor please, there was an affidavit submitted to Judge Clarie, at which time the statement was made that the handwriting samples and major case prints are essentially necessary to the grand jury investigation and are to be used only as a standard of comparison in order to determine whether or not Mr. Meadows participated in the robbery of the Union Trust Company in Stamford.

THE COURT: Well, counsel has made the argument that the foreman admitted that the jurors had nothing whatsoever to compare it to. Now, we are getting into a very difficult area. This is my first exposure to this type of defense to a subpoena, and we are faced with, I guess, certain competing and conflicting principles, one of which is the secrecy of the grand jury proceedings.

On the other hand, I think it is difficult for you to reply if you have not read this case, and your interpretation could be of assistance to the Court. What is the program

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of the grand jury for the balance of the day? Do they have business to conduct other than with Mr. [redacted]? Are they just sitting out there waiting for this ruling from the Court?

MR. CLARK: They do have business to conduct, your Honor.

THE COURT: Is your presence necessary?

MR. CLARK: Not as far as the other business goes. I can devote my attention to this matter.

THE COURT: Can you?

MR. CLARK: Yes, I can.

THE COURT: I think you ought to read this case and perhaps see what its history has been since 1973. We will do a little research ourselves.

Have you found any other cases similar to or the progeny of the case you just cited?

MR. HERRMANN: No. Not as of today, your Honor. But that's -- that was the strongest one.

Incidentally, the Third Circuit is very favorably treated by the United States Supreme Court. This case they cited -- excuse me, I'll just get it out -- which I had invited to the Court's attention, and I will just --

THE COURT: Gelbhart?

MR. HERRMANN: Gelbhart, yes. That was one where there was two appeals to the United States Supreme Court,



one from the Third Circuit and one from the Ninth Circuit in California on almost identical facts, and the United States Supreme Court reversed the Ninth Circuit and affirmed the Third and approved their opinion. And so they do have great persuasive weight with the United States Supreme Court.

I would like to, if it please the Court, to make just one statement before you go on, to correct the record, and that is, your Honor, that nobody was ever led, to the door of the grand jury room and nobody indicated anything. We were just treated -- well, I don't want to characterize it, but we were just told to sit and wait. And we waited. And while we were standing in the corridor of the court house in Hartford, outside the court room, the subpoena was served while we were standing there and we were told to still wait. We were served with a subpoena to appear someplace else on another date, but told to wait to appear before the grand jury at the same time. And we stayed there, and we waited, Mr. Meadows and I, 'til four-thirty, until one of the U. S. -- Assistant U. S. Attorneys told us we could leave. At that time I said I would refuse to leave just on his say-so; that I requested that I be excused with the witness by the judge. At which point they took me into Judge Clarie's chambers, and I made sure that we were excused, and Judge Clarie said we were excused, and that was the way it happened. There was nobody that was led to any grand jury room

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or anything else.

As a matter of fact, for the record, to put this in perspective, I don't think your honor is aware of the reasons that the reasons that the prosecution may have had for this -- for the way they handled the thing at that time. The grand jury expired either that day or the next day, which I had no knowledge of when I went up there, and apparently Judge Clarie had no knowledge of, so then it would appear that the prosecution figured that since the grand jury was expiring the next day, there wasn't much that -- leverage that they had, so they decided instead of calling us back into the grand jury, to serve us with another subpoena.

I mean, I'm just -- this is my -- my interpretation. I don't know what they were thinking about. But for the Court's information, the grand jury was expiring that day or the next day, and then they went through all of these various maneuvers at that time.

THE COURT: Well, I will have to keep an open mind on the law. Because, as I said, this is my first excursion into this area. I think I have to agree with the inference that I should draw from your statement, counsellor; that, certainly, is no way to establish a fact, having an Assistant U. S. Attorney talk to someone in a corridor. If the government is later on going to contend that there was going to be a refusal to obey



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2 Judge Clarie's order, what they should have done was to bring  
3 your client before the grand jury and have him refuse to comply  
4 with the Court's order.

5 May I ask you this. Did you cite this case to  
6 Judge Clarie?

7 MR. HERRMANN: No, your Honor. I didn't have  
8 time --

9 THE COURT: All right.

10 MR. HERRMANN: -- to do my reasearch at that  
11 time, and I did not.

12 THE COURT: I will tell you what my schedule  
13 is, because I must allow Mr. Clark an opportunity to read this  
14 case and either meet it or distinguish it or comply with the  
15 standards set forth. I can resume with counsel at two-thirty.  
16 I have a hearing on a temporary restraining order in my chambers  
17 before that, but I can be back here and be ready for counsel at  
18 two-thirty. What's your schedule, Mr. Herrmann?

19 MR. HERRMANN: Well, I mean, if the Court so  
20 desires, I will be here. I would prefer to have time to put in  
21 a written brief.

22 THE COURT: Well, we are going to do some work  
23 on it in the meantime, and Mr. Clark will. Apparently this is  
24 your source of authority and there is not too much more that can  
25 be added to it. Unless there are other cases. We are going to

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2 take a look during the noon hour to see what has followed. Mr.  
3 Clark, I am sure, will. As I said, I am sure there is also a  
4 Second Circuit case cited.

5 MR. HERRMANN: Judge Friendly's opinion, your  
6 Honor?

7 THE COURT: Yes.

8 MR. HERRMANN: That also involves handwriting.

9 THE COURT: I am going to take a look at that.  
10 We will recess.

11 MR. HERRMANN: May I just say one thing, your  
12 Honor? I think you overlooked one point that I wanted to raise  
13 in addition to this case -- was that, as I stated before for the  
14 record, my investigation indicates to me that the so-called note  
15 was made out of pieces cut out of a newspaper and cut out of  
16 magazines and not written at all, and the only way I can show  
17 that is with witnesses on the stand.

18 THE COURT: We will take one thing at a time.

19 MR. HERRMANN: O.K.

20 THE COURT: As I say, I don't know what Mr.  
21 Clark's reaction is going to be after he reads this case.

22 MR. HERRMANN: I will return at two-thirty,  
23 your Honor.

24 THE COURT: We will recess until two-thirty.

25 (Luncheon recess.)



(2:45 p.m.)

THE COURT: In the matter of Marion Meadows, are the parties ready to proceed?

MR. CLARK: Yes, the government is, your Honor.

THE COURT: Maybe I should hear the government first.

MR. CLARK: Well, during the recess, your Honor, I did have opportunity to read the case cited by Mr. Herrmann. It seems to me that that case was decided essentially on the supervisory power of the Third Circuit and as such I don't think it would necessarily be binding on this circuit. I did not find a Second Circuit case. There may be one. I probably didn't have the opportunity to come up with one. In the First Circuit I found U. S. versus Lopreato, 511 Fed. Sec' 1150. There they declined to adopt the position taken by the Third Circuit.

THE COURT: Is that in the footnote in that case?

MR. CLARK: That was a -- the Eighth Circuit, I think, had the one with the footnote. I think the First Circuit was in the final paragraph of the decision.

THE COURT: All right.

MR. CLARK: I guess your Honor is familiar with the Eighth Circuit case, Universal Manufacturing, at 508 Fed. Sec' 684, in which they refused to adopt the Third Circuit

rule, they just took no position at that point, and that was in a footnote. Later, in the Eighth Circuit, in Palmer v. U. S. at 530 Fed. Sec' 787, they said that there was no need to show reasonableness, apparently they rejected the Third Circuit's procedure, and they based that decision on United States versus Mara.

THE COURT: What was the latter case?

MR. CLARK: United States versus Palmer -- or Palmer versus United States, rather, 530 Fed. Sec' 787.

THE COURT: What circuit is that?

MR. CLARK: That's the Eighth Circuit. Then there was a follow-up, I guess it's called Scofield Two -- is the common name for it, in the Third Circuit, that's 507 Fed. Sec. 963, and they amplify on their earlier holding in Scofield One. They indicate on page 966 that -- first of all, they say what they did not say earlier, that it did not require showing reasonableness of determination of probable cause. They do say that Scofield One requires a minimum showing by affidavit in every case, that each item sought is relevant to an investigation probably within the grand jury's jurisdiction and not sought primarily for another purpose.

In view of that language I'm prepared to comply with that, and I would like to make clear that I do so only in this case. That my doing so is not intended to furnish precedent



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2 or a concession by our office that this case applies generally.  
3 However, in this particular case I have prepared an affidavit in  
4 which I state that I am an Assistant U. S. Attorney investigat-  
5 ing a certain bank robbery, that there was a handwritten note  
6 used in the bank robbery, that we wish to compare the finger-  
7 prints and handwriting examples from Mr. Meadows and further cite  
8 there was an FDIC insured bank and, therefore, it's a matter  
9 within the proper jurisdiction of the federal grand jury, and I  
10 will file that affidavit at this time. I have provided a copy to  
11 counsel.

12 THE COURT: Do I interpret the government's  
13 position as follows: That the Third Circuit authority is the one  
14 that the government recognizes; two, that the Second Circuit, at  
15 least with the time limitations we have, does not appear to have  
16 ruled directly on the question; three, under the exigencies of  
17 the present situation, the government will comply, or feels it  
18 has complied, with the Third Circuit standards for the purposes  
19 of this case; and, four, that its compliance should not be con-  
20 strued as precedent in later cases if the government decides to  
21 challenge the standards set forth in the Third Circuit; is that  
22 about your position?

23 MR. CLARK: I think your Honor accurately re-  
24 flects our position, yes, your Honor.

25 THE COURT: Are you privileged to tell me

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2 in the first paragraph of your affidavit what the phrase "hand-  
3 written note and handwritten withdrawal slip" connotes?

4 MR. CLARK: Yes.

5 THE COURT: Because there has been some indi-  
6 cation here that there was no such note in handwritten form.

7 MR. CLARK: I am not aware of the source of Mr.  
8 Herrmann's information with respect to that. Our investigation  
9 as conducted by the Federal Bureau of Investigation, having in-  
10 terviewed the tellers -- the teller that was in fact robbed --  
11 the teller that was in fact robbed indicated that a handwritten  
12 note was handed to her demanding money and, also, a withdrawal  
13 slip that had a certain amount written on it. The withdrawal  
14 slip was left at the bank, the handwritten note was subsequently  
15 found just outside the home that had been occupied by Mr. Meadows  
16 up until a few hours before that time. I have personally seen  
17 photographs of the note. It is a handwritten note. I don't  
18 know if I can elaborate further on that.

19 THE COURT: Let me ask you another way. Is it  
20 a note that was prepared by clipping out printed letters from a  
21 newspaper and then pasted together?

22 MR. CLARK: No, your Honor, it was pen and  
23 ink or pencil. It was handwritten, in any event.

24 THE COURT: And the nexus between the note and  
25 the defendant, among other things, is that the note was found in



close proximity to a place in which the government contends the witness Meadows had a residence?

MR. CLARK: That's correct. I might also note that I do indicate in my affidavit that the purpose of the exemplars is to be used for a comparison between those documents mentioned and Mr. Meadows, not to be used for some other purpose. This relates specifically and directly to the investigation in the identification of Mr. Meadows.

THE COURT: Very well. Mr. Herrmann?

MR. HERRMANN: If it please the Court, the affidavit, again, of course, is by an Assistant U. S. Attorney and by -- on information and belief received from an FBI agent and so on, not by the grand jury or grand jury foreman, which I would like to put aside for a moment because Mr. Clark just brought up an issue of the purported note. That this purported note was found at the home or residence of Mr. Meadows.

THE COURT: I don't think he quite said that, but go ahead.

MR. HERRMANN: Well, something -- he brought -- he said -- and I think that raises a very distinct question -- or could raise a very distinct question of the propriety of the seizure which should be gone into. Because if this note -- so-called note -- was illegally taken, then it cannot be used.

THE COURT: I don't think Mr. Clark said that

it was seized at the home of the witness.

MR. HERRMANN: He was sort of vague on that. But I think that we're entitled to go into that. And the Supreme Court of the United States is very clear on that one. That if that is so -- I mean, if that is so, I can't -- I don't know. I just heard him say that.

THE COURT: Well, why don't we ask Mr. Clark to recollect what he said. I could also check with the court reporter. I did not get the impression that it was seized from Mr. Meadows' residence.

MR. CLARK: It was on -- I don't recall specifically how I did phrase it, your honor, however, it was seized either in or upon a small outdoor stove or fireplace-type of thing outside of the residence and probably on the property that was occupied by Mr. Meadows. This was rented or leased property. We can concede for the moment that he would have standing at some point to object, however, in United States versus Calandra, in 414 U. S. -- does, as Mr. Herrmann suggests, speaks clearly on the issue and it suggests that grand jury investigations are not to be interrupted by questions as to the legality of evidence presented to them.

THE COURT: Aside from that issue, Mr. Herrmann, what else do you have to say?

MR. HERRMANN: I have cases to the contrary,



if I could search my records, but -- then, I would like to put on the record, your Honor, that, you know, if this is so, and if they concede that Mr. Meadows would have standing, that it would now be incumbent to hold a hearing on that before going further. Because the United States Supreme Court has specifically said when you can't use illegal evidence, that means you can't use it. It means period you can't use it. That's an old, old case used by Justice Holmes, and I would like a hearing on -- specific -- especially on that point.

THE COURT: That's another issue. How about the issue that I am faced with today? Let's put this in --

MR. HERRMANN: I don't think his affidavit is sufficient, your Honor.

THE COURT: That's something different. Now, let's put this in perspective, because I am in the middle of an injunction hearing in another case. The first question that came before me in this case concerns the motion to quash the subpoena, and the claim is made that under the controlling authority of the Third Circuit the government has made no showing whatever of the reasonableness of the request for exemplars and fingerprints before the grand jury. The government has said, "O.K. We'll try to conform to the standards set by the Third Circuit -- without establishing precedent in this circuit."

Now, let's stay on that point, because this

other point may need additional research on my part. But, you are saying the affidavit is not sufficient?

MR. HERRMANN: It doesn't set forth what Mr. Clark now told the Court. What he tells the Court is different from the affidavit. Now, what is the Court going to rely upon?

THE COURT: What's different?

MR. HERRMANN: He talks in here about he's an Assistant U. S. Attorney and he's investigating and so on and so forth, and he says agents of the Federal Bureau of Investigation have advised him, which, of course, is, you know, hearsay on hearsay; that latent prints of value were developed -- would develop, and then, when he talks about this so-called note, handwritten notes, he doesn't go into at all how they got it, where they got it or who even has it.

The last time I questioned the grand jury foreman he didn't have it and he still may not have it.

THE COURT: Well, first of all, I am not sure the government has to go that far, even in the light of the Third Circuit rule, in the face of lack of proffer of evidence to the contrary. But secondly, and most importantly, Mr. Clark said he himself has seen a photostat.

MR. HERRMANN: Did you say that?

THE COURT: Of the note.

MR. CLARK: I have seen a photograph of the note.

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2 And it's at the FBI laboratory.

3 THE COURT: Yes. He said he personally observed  
4 the note that's in question, the note to which the government wants  
5 a comparison. Now, he is an officer of the court. He has sub-  
6 mitted an affidavit under oath. I am not sure, at least prima  
7 facie, the government has not complied.

8 MR. HERRMANN: Your Honor, I'd have a question --  
9 I don't have a question -- his word as an officer of the court.  
10 Mr. Clark issued an affidavit on the rapias that was incorrect.  
11 I don't think he did it intentionally, but it was incorrect -- in  
12 a very major particular. I mean, I wouldn't for a moment question  
13 his word, I wouldn't question his word, but I think this new thing  
14 that's come up now about the note being seized -- and I just have  
15 in front of me here, your Honor, for the record, the leading  
16 case is Silverthorn Lumber Company against the United States in  
17 251 U. S. 385, which is a subpoena duces tecum case, and it was  
18 before the grand jury, and Justice Holmes says you cannot use  
19 illegally seized evidence for anything, grand jury or otherwise.

20 THE COURT: I also have in the back of my mind  
21 that I read a Supreme Court case on wiretapping --

22 MR. HERRMANN: Yes, your Honor.

23 THE COURT: -- where the court said -- and  
24 this is all subject to my taking a one hundred and eighty degree  
25 turnabout when I find out what case I'm referring to myself --

that the alleged illegality of the wiretap procedure could be called into question before the witness was required to go before the grand jury to give a voice exemplar which would enable the government to compare the voice exemplar with the allegedly illegal wiretap.

MR. HERRMANN: There's a case, your Honor --

THE COURT: Do you know the case I'm referring to?

MR. HERRMANN: It's not exactly a voice exemplar, but I think the case that your Honor is referring to is in Re: Grand Jury Proceedings, Harrisburg, Pennsylvania, again, U. S. Court of Appeals, Third Circuit, 450 Federal 2nd 199, and that was affirmed by the United States Supreme Court in the -- it's 408 U. S. 41. It's the -- what was that that your Honor mentioned before -- the Gelbrand -- it was affirmed.

THE COURT: I didn't mention it.

MR. HERRMANN: It was affirmed under a different name. Previous to the luncheon break, your Honor, we mentioned that case, because it's in that -- it's referred to in that case.

THE COURT: Gelbart?

MR. HERRMANN: I think that's it.

THE COURT: 408 U. S. 41?

MR. HERRMANN: Yes, your Honor.

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Gelbart against United States, 408 --

THE COURT: Forty-one.

MR. HERRMANN: -- forty one. And that's an illegal search and seizure.

THE COURT: Let me get one ruling down first. Based on the record so far and in view of the representations made by the Assistant U.S. Attorney in open court and in the affidavit, I overrule the objection which was directed to the reasonableness and relevancy of the witness' appearance before the grand jury.

Now, we come to issue number two. Frankly, I am not completely familiar with the Calandra case, but I also thought it held, Mr. Clark, that the Fourth Amendment objections must await a motion to suppress later on. But that's a dim memory on my part. Mr. Herrmann has mentioned some other cases that I am just not aware of. As I say, reaching into my memory, I remember that wiretap case in which the petitioner claimed that he had a right to challenge the legality of the search and seizure prior to the grand jury being able to -- I thought it was a voice exemplar -- but being able to do something.

Now, where do we go with issue number two?

MR. HERRMANN: I think that's vital. Because, if it please the Court, what Mr. --

THE COURT: But, you see, I was directing the

question to Mr. Clark.

MR. HERRMANN: I'm sorry. I'm sorry.

THE COURT: I know what your position is. Your position is that we don't do a thing until we resolve that issue.

MR. HERRMANN: No, your Honor. What I was going to say -- excuse me. I'm an old law professor, and I was going to lecture. What I was going to say was, about the illegal evidence with a grand jury, the rule -- there's a distinction of the rule, which I was going to set forth, as I understood, it to the Court, with the Court's permission. That's what I was going to say. I wasn't going to argue.

THE COURT: Why don't we hear you, then. I'm sorry. Why don't I let you finish.

MR. HERRMANN: What I was going to say, your Honor, was, I think what Mr. Clark has in mind was the Blue case, which is -- basically, the idea is that a grand jury can indict a person even though there may be some illegal evidence before it provided that there's also legal evidence. And that's really not the time to test it, before indictment, whether it's based on legal or -- illegal or legal.

However, this is a different issue here. This is an issue of calling a person before the grand jury when there is a question in issue of whether the evidence that they have or

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the only evidence that they have may be illegally seized. And the distinction is very clearly made in the -- In Re: Grand Jury Proceedings, Harrisburg, Pennsylvania, the one I cited before, in 450 Fed. 2nd at page -- at 199, et seq. And it's also in the landmark case, of Silverthorn Lumber Company against the United States, in 251 U. S. 385. And Mr. Justice Holmes in that case said in the Silverthorn Lumber Company case, said that the essence of a provision forbidding the acquisition of evidence in a certain way is that, not merely evidence so acquired shall not be used before the Court, but it shall not be used by the government at all.

This language would logically appear to mean that the Fourth Amendment prevents the government from using illegally seized evidence as the basis for questioning aggrieved bodies before a grand jury.

"As we understand the holding of Silverthorn, it would appear to control the issue raised by Sister Egan." She was the particular one who was subject to illegal wiretaps, a nun. I don't know if you recollect these. These were the cases back in 1970s. Various nuns and priests who were doing the civil rights action.

THE COURT: Do we agree that the issue before the Court at the present time is that the petitioner moves to quash the subpoena on the ground that the exemplar sought by the

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grand jury may not be obtained because the items which the government intends to compare the exemplars with were illegally seized

MR. HERRMANN: Yes, your Honor.

THE COURT: And you have mentioned some cases which you contend --

MR. HERRMANN: Substantiate -- I contend, substantiate that.

THE COURT: At least that there should be a hearing on the issue prior to --

MR. HERRMANN: Well, at least -- I mean I don't think it's been established that they've been illegally seized. I mean, I think we'd have to establish that before the Court first and then get into the law.

THE COURT: Now, Mr. Clark. Go ahead.

MR. CLARK: With respect to that precise point, where your Honor's finding the issue, I think it's important to keep in mind that one of the documents that these exemplars would be compared with was left at the bank. So there's no issue whatsoever of search and seizure.

Secondly, I think that Mr. Herrmann seems to be glossing over the point that what's really at stake here is the compelled production of additional evidence. It's not a question of whether any prior evidence was illegally seized or not. So I think that's another consideration. We're considering



whether this subpoena is to be enforced -- which is requiring him to produce new evidence before the grand jury.

Finally, I think that -- I mentioned United States versus Calandra. There are also the wiretap cases in the Second Circuit, such as In Re: Milo, which is in 529 Fed. Sec', In Re: Gruse and Turgeon. And I think that an analysis of those cases and the Calandro case indicates that the grand jury inquiry is not to be interrupted for the purpose of litigating the legality of searches and so forth along the way. That's a determination that's to be made down the road, as to whether this would be admissable at trial, but that the grand jury inquiry should not be interrupted at this point.

THE COURT: Of course, you raise a very good point, that one of the documents that will be used for comparison was not seized in any residence or anyplace where standing or objections based on prejudice can be raised, and that is at the bank where the robber left it. I certainly agree with you on that.

With respect to the second document, I am not sure, Mr. Clark. I have not read these cases with that in mind. Calandra I read some time ago, and I am not sure I read it with this issue in mind. Some of the other cases, Milo and the others, just do not ring a bell.

How can we proceed so as to preserve your wish to go forward in an expeditious manner and yet protect the

petitioner in the event that he has a solid legal objection?

Let me ask you this: is the grand jury going to be in session for the next week or two?

MR. CLARK: The grand jury will sit tomorrow. We then excuse them subject to call. It would be perhaps three or four weeks before they're in again.

This matter has been dragging on somewhat, and that this is, as Mr. Herrmann indicates, a fourth attempt.

THE COURT: Let me ask you this -- and if you are not privileged to answer, please, so state -- but let us assume he gives his exemplars today, is there an expert who is going to take a look at those exemplars?

MR. CLARK: They would be forwarded to the FBI laboratory.

THE COURT: All right. Now, what if I ordered the exemplars to be given today -- because you are surely on solid ground with respect to the withdrawal slip -- but that the government does not forward the handwritten note until I hear further arguments on Mr. Herrmann's objection to the comparison?

In other words, is it agreeable, based on my ruling so far, which may be subject to review, but I have already ruled that you have shown reasonable grounds for the exemplars, that you forward the withdrawal slip and the exemplars to your expert? Hold off your handwritten notes until we have this



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hearing on the law? In the meantime, I will have an opportunity to review all these cases.

MR. CLARK: All right.

THE COURT: Now, by that I mean I could hopefully have a hearing -- and when I say hearing, I mean a chance for everyone to review the law and orally argue to the Court -- within a matter of days. In fact, if counsel can get ready, I can hear you on Friday. Today is Tuesday.

MR. CLARK: I think I can agree to this, your Honor. First of all, the documents have already been forwarded, but I can easily direct that they not be compared -- or that the handwritten note found at the home not be compared. The fingerprints and the withdrawal slip in the bank I take it would not be covered by that agreement, only the note found at the home.

Secondly, and again as with the affidavit, I wish to make it clear that I don't agree to that as a matter of law or precedent but as an accommodation to all the parties. In my estimation, as I read the cases, the rule -- or the law is precisely to avoid hearings to interrupt the grand jury. I think that --

THE COURT: But the grand jury is not going to be interrupted.

MR. CLARK: Well, in a sense the investigation is interrupted in that the work being performed on behalf of the

grand jury by the FBI lab would be interrupted. But since there's only a few days, I find as a practical matter I have no trouble reaching that accomodation.

THE COURT: I could hear you Friday morning.

MR. CLARK: Fine.

THE COURT: If you can get ready.

MR. CLARK: Sure. Yes.

THE COURT: How about you, Mr. Herrmann?

MR. HERRMANN: I have been here, your honor, two days in a row already. I don't think I could get ready before next week.

THE COURT: This is my calendar for next week.

MR. HERRMANN: Today is the 5th. I know -- next Thursday I'm in Probate Court in Old Saybrook. Tentatively, Tuesday?

THE COURT: How about Tuesday?

MR. HERRMANN: Tentatively Tuesday, your Honor? Subject to me checking with my office to make sure.

THE COURT: Well --

MR. HERRMANN: I know that -- you know, it's an important matter.

THE COURT: Tuesday.

MR. HERRMANN: Tuesday.

THE COURT: At ten.



MR. CLARK: The 12th, your Honor?

MR. HERRMANN: What date is that?

THE COURT: The 12th.

MR. HERRMANN: The 12th?

THE COURT: The 12th at ten o'clock.

Now, I suppose, without knowing what is going to happen, that there is a possibility that exists that Mr. Meadows this afternoon will refuse to comply, and we have to think about a hearing on that basis.

MR. CLARK: I have prepared additional --

THE COURT: Well, I'm anticipating something that hasn't happened yet. Are you privileged to tell me what is going to happen?

MR. HERRMANN: Well, I would just like, before I say that, your Honor, to just -- would respond to your Honor's comment.

THE COURT: Yes. Go ahead.

MR. HERRMANN: That the prosecution is on solid ground with the withdrawal slip. I mean, at this point we really don't know if they're on solid ground. And secondly, we don't know what's on the withdrawal slip. According to my investigation, some of the things I saw, the withdrawal slip had numbers and no writing. The so-called withdrawal slip had numbers and no writing, whereas the note was, according to my investigation, was made

of cut-out pieces. But, all right, they say it was writing. But in any event, the note has a very, very serious constitutional question involved, concerning the note. Assuming that what they say about the withdrawal slip is true, and going further, without admitting anything, just assuming that they are on solid ground with their withdrawal slip, it has no handwriting on it. Now you're going to order a fellow to give a handwriting for something that has no handwriting on it.

THE COURT: They may ask for numbers. I don't know.

MR. HERRMANN: Well, then, I should think the order would -- you know, would reflect that, your Honor.

THE COURT: I am certain that the Third Circuit did not -- even the Third Circuit did not intend for me to have a plenary, full-blown hearing of the government's evidence. I am satisfied -- and I am not going to change my ruling -- that this affidavit before us, plus the oral statements made by an officer of this court, are sufficient for me to deny the motion to quash, and I so deny it, with the condition that the comparison between the exemplars so ordered and the note not be made until further order of the Court.

Now, that is the ruling of the Court. It is done. It is completed. Your objections are noted. I think the record is crystal clear as to the issues and I think it would be



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2 superfluous if we kept on with this for the balance of the after-  
3 noon.

4 MR. HERRMANN: Could you just clarify -- excuse  
5 me -- to what Tuesday is going to be?

6 THE COURT: All right. Tuesday is scheduled  
7 for argument on the issue as to whether or not the government can  
8 use the exemplars to be compared with the handwritten note found  
9 near or in the petitioner's home. But the exemplars shall be  
10 given for comparison with whatever else the government may have  
11 including the withdrawal slip.

12 Now, that is the ruling of the Court.

13 MR. HERRMANN: All right. I know --

14 THE COURT: My next question is, if we are  
15 going to have a hearing here on contempt, I have to schedule  
16 that. As you know, I am in the midst of a temporary injunction  
17 hearing and I am solidly committed almost every hour of every  
18 day, so I would like to plan my course.

19 I have overruled your objections to the request  
20 for exemplars. I denied your motion to quash the subpoena with  
21 the condition so set forth earlier. Now, where do we go from  
22 here?

23 MR. HERRMANN: And I know you don't have to  
24 ask for an exception in federal court, it's clear.

25 THE COURT: It's clear.

MR. HERRMANN: I would direct -- or -- tell the witness not to give the exemplar at the time, your Honor, respectfully.

THE COURT: Very well. Your next move, Mr. Clark?

MR. CLARK: We would come into court. I have affidavits prepared, an application for an order compelling the handwriting and fingerprints. I have an order drafted for your Honor's signature. I have all the paperwork done. I can take him before the grand jury, he can refuse, he can come back in, and you sign the order, and if he refuses we'll have to have a contempt hearing.

THE COURT: Here is what we will do. You may proceed. I am ordering the petitioner, Marion Meadows, to appear before the grand jury this afternoon and give the exemplars as requested by the government.

I am going to recess now and pick up with my temporary injunction hearing. Let me know if you need me later this afternoon. I will be available.

(Whereupon, a recess was taken at 3:15 p.m.)



THE COURT: Mr. Clark, I did anticipate that there would be a contempt proceeding, but I was just unable to refresh my recollection on the law. Because, as I told you, I am hearing another matter that needs immediate attention. From the government's point of view, what is the procedure that should be followed?

MR. CLARK: Well, your Honor, I think, at this time I have prepared affidavits, application to compel handwriting, an affidavit and an order for your Honor to sign. In the affidavit I state that Mr. Meadows refused before the grand jury to produce the exemplars requested. I would submit these to the Court. If necessary, the grand jury foreman is sitting next door and can come in on just a moment's notice to indicate that Mr. Meadows did in fact refuse his request on behalf of the grand jury. At that time I would request that your Honor sign this order compelling the exemplars, and if there's a stated intention at that point to refuse to comply with your Honor's order, then we would request that Mr. Meadows be held in contempt.

THE COURT: Has Mr. Herrmann been given copies of the moving papers?

MR. CLARK: He has, your Honor. He has.

THE COURT: May I see the moving papers?

All right, would you like to be heard, Mr.

Herrmann?

2 MR. HERRMANN: Yes, your Honor. I don't think  
3 any foundation can be made for this without the grand jury fore-  
4 man.

5 THE COURT: Yes. We'll bring him in

6  
7 G E O R G E E . B I T G O O D, of 15 Wild Apple Lane, Old  
8 Saybrook, Connecticut, having been first duly sworn,  
9 testified as follows:

10 THE COURT: Mr. Bitgood, keep your voice up,  
11 if you would, please.

12 THE WITNESS: O.K.

13 DIRECT EXAMINATION BY MR. CLARK:

14 Q Mr. Bitgood, are you the foreman of the grand jury  
15 sitting in New Haven today?

16 A Yes, I am, sir.

17 Q That's a federal grand jury for the District of  
18 Connecticut?

19 A Yes, sir.

20 Q And in conjunction with your duties as foreman did you  
21 have occasion to have appear before you today one Marion Meadows?

22 A Yes, I did.

23 Q At the government's request did you direct Mr. Meadows  
24 to provide handwriting exemplars and major case fingerprints?

25 A Yes, I did, sir.



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Bitgood - Direct/Cross

2 Q What was Mr. Meadows' response to your request or di-  
3 rection?

4 A He denied my proposal.

5 MR. CLARK: I have no further questions.

6 BY THE COURT:

7 Q Do you recall what he said, as best you can recollect?

8 A No. I may have written it down.

9 Q But there is no question in your mind he refused to  
10 give --

11 A He did.

12 Q -- exemplars?

13 A Yes, sir.

14 THE COURT: All right, Mr. Herrmann, would you  
15 like to ask some questions?

16 MR. HERRMANN: Yes, I would, your Honor.

17 THE COURT: Yes.

18 CROSS-EXAMINATION BY MR. HERRMANN:

19 Q Mr. Bitgood, have you seen today or at any other time  
20 a paper writing that appears to be a note that might have been  
21 used in the bank robber?

22 MR. CLARK: Object, your Honor. I think we're  
23 getting into the secrecy of the grand jury.

24 THE COURT: Well, I will allow him to answer  
25 yes or no as to whether he has seen that. That much has been

disclosed in open court.

Have you seen the note that was used in the bank robbery?

THE WITNESS: No, I haven't.

Q Have you seen any paper writing at all that in any way resembles or looks like or could be a note that was used in the bank robbery?

A No.

Q Do you have in your possession or in your custody or under your control any paper writing of any kind or nature or any kind of a writing of any kind or nature that could have been used in the bank robbery?

A No, I don't.

Q Did anybody else on the grand jury in your presence see or was shown any such note as I just referred to?

A No, sir.

Q Excuse me?

A No, sir.

Q No. Do you -- have you seen anything, paper or writing of any kind, which looks like a bank withdrawal slip with that writing on it?

A No, I didn't, sir.

Q You have not. Did anybody on the grand jury, of which you are foreman, in your presence look at or were they shown such



1  
2 a withdrawal slip?

3 A No, sir.

4 Q Do you have, sir, in your possession, custody or under  
5 your control any such paper, writing, withdrawal slip or anything  
6 that looks like a bank withdrawal slip?

7 A No, I don't, sir.

8 Q Do you, Mr. Bitgood -- or have you seen -- excuse me.  
9 I'll withdraw that. Have you seen, Mr. Bitgood, any copies of  
10 fingerprints, something that would like a fingerprint?

11 A No, I haven't seen it.

12 Q You haven't seen nothing like that. Was anybody on the  
13 grand jury, of which you are serving as foreman, shown any such  
14 things, such copies of fingerprints in your presence?

15 A No, sir.

16 Q Do you have in your custody or possession or under your  
17 control copies of any kind or originals of any kind of anything  
18 that looked like fingerprints?

19 A No, sir.

20 Q Would you know, sir, what this phrase means -- and I  
21 am reading here -- "Latent prints of value"? And I assume "prints"  
22 means fingerprints. Do you understand what that means? "Latent  
23 prints of value"?

24 A I would like you to explain that, sir.

25 I don't understand what it means. I just wanted to know

if you do. If you understand it. You can just say yes or no.

A Latent prints?

Q Latent prints. Meaning, fingerprints of value?

A Fingerprints that were left and would be of value in an investigation, I assume.

Q Do you know what that means?

A Evidence.

Q That's your answer.

MR. HERRMANN: All right, I have no further questions, your Honor.

THE COURT: Mr. Clark?

MR. CLARK: No, your Honor.

THE COURT: You may object to this question, Mr. Clark -- you may not -- but, as foreman of the grand jury why did you ask Mr. Meadows to give you the exemplars? Do you know why you are asking for the exemplars? Do you know what is to be done with them?

THE WITNESS: It was my understanding they were to be used in evidence.

THE COURT: Before the grand jury?

THE WITNESS: Eventually.

MR. HERRMANN: Pardon?

THE COURT: He said "eventually."

Is it your understanding that the need for these



2 exemplars comes about as part of your investigation into this  
3 bank robbery?

4 THE WITNESS: Yes, sir.

5 THE COURT: There is no question in your mind  
6 about that?

7 THE WITNESS: No question.

8 THE COURT: Thank you, very much, Mr. Bitgood.

9 (The witness was excused at 4:10 p.m.)

10 MR. HERRMANN: May I just say, your Honor, with  
11 all due respect, I think the last question was most leading.

12 THE COURT: Yes. Your comment is noted.

13 MR. HERRMANN: Just make it -- my objection  
14 on the record.

15 THE COURT: Yes. All right, now, Mr. Clark,  
16 what do you suggest at this point?

17 MR. CLARK: Well, I would request, first of  
18 all, that your Honor sign the order compelling the production of  
19 fingerprints. I think we have laid a foundation. I think we  
20 should then elicit from counsel whether his client intends to  
21 comply with that this afternoon, and if not, the government would  
22 ask that he be held in contempt of court for refusal of a direct  
23 order of the Court in the Court's presence.

24 THE COURT: All right, I will sign the order.  
25 Does he have to be brought back into the jury room?

MR. CLARK: I think not, your Honor. At this point it's the order of the Court that he comply with what the grand jury has told him to do. He's already refused the grand jury once.

THE COURT: Well, now that he has a written order signed by the Court he may change his mind, so I will sit here on the bench. Would you let me know if there if he changes his mind when he is brought before the grand jury? If he does change his mind, then everything is moot. If he has not, then I will hear you on where we go from here. And I will hear counsel for the defendant.

I will sign this and put the time down.

Mr. Meadows, so there will be no misunderstanding, what I have signed is an order directing you to present yourself before the grand jury in the room next door, and I direct and order you to provide handwriting exemplars and major case prints as requested by the foreman of the grand jury.

MR. CLARK: I think we could perhaps specify to your Honor that quite obviously that can't be done in the grand jury. That if the foreman directs that it be done in the marshal's office, that he be fingerprinted in the marshal's office and the exemplars be given there also.

THE COURT: Yes. That you comply with the request of the foreman to provide him with handwriting exemplars



and major case prints in the manner recommended by the foreman so that these exemplars and prints can be used before the grand jury in their investigation.

MR. CLARK: I will take Mr. Meadows into the grand jury now.

THE COURT: Yes.

(Suspension of proceedings from 4:15 p.m. to 4:17 p.m.)

MR. CLARK: Mr. Meadows did again refuse, your Honor. Do you think it's necessary to bring in the foreman again?

THE COURT: Do you wish the foreman to be brought in again, Mr. Herrmann? Maybe, in excess of caution, we should.

GEORGE E. BITGOOD, resumed.

THE COURT: Mr. Bitgood, you should consider yourself still under oath.

BY MR. CLARK:

Q You are the same Mr. Bitgood, the foreman of the grand jury that testified a few minutes ago?

A Yes, sir.

Q And was Marion Meadows once again brought before the grand jury and requested to provide the handwriting exemplars and fingerprints?

A Yes, sir.

Q And what was his response?

A He -- on advice of counsel, he decided to use the Fifth Amendment.

Q Did he in fact refuse to provide the documents -- or the exemplars that you ordered?

A Yes.

MR. CLARK: Nothing further.

THE COURT: Mr. Herrmann, any questions?

MR. HERRMANN: No, I have no questions, your Honor.

THE COURT: Very well, Mr. Bitgood.

THE WITNESS: Thank you.

THE COURT: Does the government have an application?

MR. CLARK: An oral application, your Honor, that Mr. Meadows be held in contempt.

THE COURT: Mr. Herrmann?

MR. HERRMANN: If it please the Court, the contempt procedure requires a finding, with due respect, that the refusal is without just cause. It's not merely the refusal, but it must be a refusal without just cause.

At this point of the proceedings we have set down for next Tuesday, October 12th, at ten a.m. a hearing on the



question of the legality of some of the evidence which the government may have that remains to be heard. That's a serious constitutional right of the defendant, which remains to be heard.

Secondly, I think it's quite clear from the testimony of the grand jury foreman that this is not a grand jury investigation, but an FBI and U. S. Attorney investigation. And that Mr. Meadows can stand upon his Fifth Amendment rights in that respect. Because this is a police investigation, this is not a grand jury investigation. The grand jury foreman has nothing. Doesn't even know, really, what this is all about. The exemplars are for comparison only. He's not going to compare them to -- what's he going to compare them to? In addition to the fact that it may develop next Tuesday that if there is anything to compare them to, they may have been illegally taken and inadmissible in evidence.

And we also have on the witness' behalf the right to move to suppress whatever illegal evidence there may be, which, of course, it just came to my attention. I haven't had time. But we have a right to suppress it even at this stage of the proceedings.

So I request that this matter be adjourned until Tuesday, when I will appear here, Mr. Meadows will appear here, and we can argue the illegality questions. That may make the whole thing academic. There may be nothing left to compare,

and then his refusal will not have been without just cause.

THE COURT: Mr. Clark?

MR. CLARK: Well, I'd say two things, your Honor. The hearing next Tuesday, first of all, will not go into the merits, I don't believe, of the search. I think it will go into whether a hearing is necessary.

Secondly, in view of the fact that there was the withdrawal slip left in the bank, the merits of the search at the home are irrelevant. There will be nothing left to compare with, in any event.

Finally, I think that this is a matter which in the administration of justice should be dealt with promptly. That it should not be set off for a hearing in the future. I think there was a contempt of the Court's order in the Court's presence this afternoon, and I think that that should be dealt with according to law, and that Mr. Meadows should be held in contempt for refusal of the order of the grand jury and your Honor's order.

THE COURT: What sanctions does the government propose?

MR. CLARK: I propose that Mr. Meadows be incarcerated until he complies with the order, until the life of the grand jury, or at some future point, the point of incarceration is something that could be determined. However, there's an ongoing refusal today and I think that steps should be taken to



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2 deal with that today.

3 THE COURT: See, I really don't see the sig-  
4 nificance of the hearing on Tuesday concerning the witness' re-  
5 fusai to supply exemplars today. As I noted previously, the  
6 government, facially, has a right to compare the exemplars to  
7 the withdrawal note in the bank. Whether it can thereafter use  
8 the exemplars to compare with the handwritten note found in or  
9 near the home of the defendant is left open, but there is cer-  
10 tainly an avenue which the Court has already determined to be a  
11 proper aspect of the grand jury's investigation and which the  
12 defendant has refused to comply with, and, therefore, it seems  
13 to me to be a clear case of contempt.

14 MR. HERRMANN: Well, your Honor, I disagree. Be-  
15 cause, number one, there's been nothing that has been established  
16 yet at to the note -- I mean as to the withdrawal slip. They  
17 have already admitted right here in open court -- they have ad-  
18 mitted that there could be an illegal search and seizure as to  
19 the alleged note.

20 Now, when you get into that kind of a point  
21 where they have already admitted possible illegal conduct, I  
22 don't think, when you're talking about a man's freedom and a  
23 man's rights, and you're talking about the Bill of Rights, and  
24 you're talking about the United States Constitution, that you  
25 can start in putting little corners and saying, "Well, you've

one thing here and not another thing here." I think this is a very big overall, very important question. And all Mr. Clark says is, "Well, the note was found at the bank." I am not saying that he would lie to the Court, I wouldn't say for a minute that, but we all know that's no evidence of anything in particular. The fact that Mr. Clark says -- you know, that's the way it was. He already admits that there could be an illegal search as far as this alleged note is concerned. And we all know that is evidence. Because it goes the other way.

And you're dealing here with a very fundamental, basic constitutional right. And if there is illegality here, then the Court is being asked to join into it and approve it, which is in the case which I cited to your Honor before, the In Re: Grand Jury Proceedings, Harrisburg, Pennsylvania, in 450 Federal 2nd 119. They specifically go into that. And they even mention in there -- or in the Silverthorn case -- about while you're interrupting and it might take time and it might delay matters. And the Court says: So be it. When you come to important, basic, fundamental constitutional rights, well, then, you take time, and then you do interrupt, it doesn't happen too often, and you just can't give anybody a short shrift when it comes to these fundamental rights.

And the Court says the primary thrust of the Bill of Rights is to shield citizens from certain actions by the



government. The implication of judicial remedies to provide this shield follows naturally from the declaration of the right. And this was in Grand Jury Proceedings.

Now, I see no harm in -- Tuesday -- going through this question on the illegality. Because if the search is illegal and if these documents cannot be used, I intend to move to suppress them. They will have nothing to compare it to at all. Right now the grand jury foreman has nothing anyway, but he'll certainly have nothing and the whole matter will be academic.

I think it's unfair at this point to hold this man in contempt and coerce him and twist him and punch him and so on before we've had our full day in court. After we've had our full day in court, that's a different ballgame.

THE COURT: The issue at the present time is not whether or not the Court should have signed the order. The order has been signed. The question is has he willfully and knowingly violated the Court's order. It is crystal clear that he has. There is no indication that he did not understand the order, there is no indication that he misinterpreted the order, and there is every indication that he willfully violated the order.

Therefore, I find him in contempt. I order him to be confined during the life of this grand jury unless he purges himself of the contempt order prior thereto.

What is the life of the grand jury?

MR. CLARK: The grand jury first sat, I believe, on September 27th, your Honor. It would be 18 months from that date.

THE COURT: That is the Court's order.

MR. HERRMANN: May I have an exception on the record to that, your Honor? And I would like to file an appeal on it and request a stay until I file the appeal.

THE COURT: Mr. Clark?

MR. CLARK: I don't think a stay would be appropriate, your Honor.

THE COURT: I will order a stay until the witness has an opportunity to present the matter to the Court of Appeals, which, I take it, can be done within the next few days. Certainly, it would seem to me, by Monday.

Therefore, I will order a stay of the Court's order until ten o'clock Tuesday of next week, October 12th, at which time the defendant shall present himself in court not only for the hearing which is scheduled, but also to submit himself to the marshals, unless he purges himself or unless the Court of Appeals sets the order of the Court aside.

The stay is granted until ten o'clock, Tuesday, October 12th, at which time the defendant shall present himself in this courtroom.

-00000-



UNITED STATES DISTRICT COURT

FOR THE

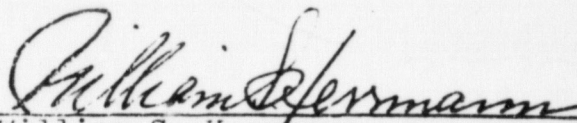
DISTRICT OF CONNECTICUT

-----  
IN RE MARION E. MEADOWS and GRAND : MISCELLANEOUS NEW HAVEN  
JURY PROCEEDINGS, NEW HAVEN, : ~~RECEIVED~~ N-76-343  
CONNECTICUT : NOTICE OF APPEAL  
-----

NOTICE IS HEREBY GIVEN that Marion E. Meadows, the person above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final order of the United States District Court for the District of Connecticut that ordered the said Marion E. Meadows to give and provide handwriting samples and major case prints (fingerprints) in the above proceedings and from the final order of the said United States District Court for the District of Connecticut finding the said Marion E. Meadows in contempt of the said Court for refusing to give and provide same and ordering him to be held in custody until he complies with the said order of the said Court or until the end of the term of the Grand Jury and from the final order of the said United States District Court for the District of Connecticut which denied the motion of said Marion E. Meadows to quash the subpoena in the above proceedings.

Dated: Stamford, Ct.

October 7, 1976

  
William S. Herrmann  
Attorney for Marion E. Meadows  
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1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF CONNECTICUT  
4

5 ----- x

6 In the Matter of: :

7 GRAND JURY PROCEEDINGS :

MISCELLANEOUS NH-116

8 CONCERNING MARION MEADOWS. :

9 ----- x

10 New Haven, Connecticut  
11 Tuesday, October 12, 1976

12 B e f o r e :

13 HONORABLE ROBERT C. ZAMPANO, U.S.D.J.

14 A p p e a r a n c e s :

15  
16 PETER CLARK, ESQ.  
17 Assistant United States Attorney  
New Haven, Connecticut

18  
19 WILLAIM S. HERRMANN, ESQ.  
20 Attorney for Marion Meadows  
16 Oak Street  
Stamford, Connecticut 06905

21  
22  
23  
24 Gerald Gale  
Reporter  
25



1 THE COURT: In the matter of Grand Jury  
2 proceedings concerning Marion Meadows, Miscellaneous No-116.  
3 Are the parties ready to proceed?  
4

5 MR. HERRMANN: Yes, your Honor.

6 MR. CLARK: Yes.

7 THE COURT: I think at the outset you should  
8 inform the Court as to what has occurred since we were last  
9 together on October 5th. I believe at that time there was  
10 an indication that Mr. Meadows would seek appellate review  
11 of the orders entered on October 5th.

12 MR. HERRMANN: I filed with the Court a  
13 Notice of Appeal. It should already be here. I have a  
14 copy for the Court, if I can find it.

15 THE COURT: You mean you are taking the  
16 usual and ordinary channels of appeal?

17 MR. HERRMANN: I have checked and they said  
18 that's the way you have to do it. I filed this -- it's an  
19 extra copy. I don't know if you want it marked as an  
20 exhibit.

21 THE COURT: Are you informing the Court that  
22 you attempted to have either a single judge or a panel of  
23 the judges of the Court of Appeals hear this matter  
24 expeditiously and you were informed it was not possible?

25 MR. HERRMANN: Not in those words. I checked  
with the Court of Appeals in New York, with the appellate

1 clerk down there; then I checked with the appellate clerk  
2 in this Court, and they -- I was informed that the only way  
3 that they knew of taking an appeal, that the appeal must be  
4 filed in this Court with the filing fee, which I did, and  
5 then they said then I would get the forms C and D -- I  
6 don't remember the letters -- and then that had to be filed  
7 in the U. S. Court of Appeals with the \$50 filing fee, and  
8 then it would proceed from there.

9 I also asked the Court of Appeals clerk  
10 about a stay, and they said that their usual proceeding,  
11 as far as they were concerned, was that the stay usually  
12 comes from the trial Court, from this Court.

13 However, if this Court wouldn't give a  
14 further stay, then the application would be made to them  
15 for the stay, and they said that was their procedure, so I  
16 followed it promptly. That's been filed in this Court. I  
17 mailed it out. Didn't you get a copy, Mr. Clark?

18 I mailed a copy to the United States Attorney,  
19 so probably it didn't go through the channels to get down to  
20 Mr. Clark there.

21 THE COURT: How do we proceed this morning?

22 MR. CLARK: Mr. Herrmann has the floor,  
23 your Honor. It's his motion.

24 MR. HERRMANN: If you want me to continue,  
25 I have some things which I would like the Court to take



1 under consideration.

2 I request the Court to take this under  
3 consideration, because I think the Court in its order at  
4 the last hearing was mistaken, and what I invite to the  
5 Court's attention is in the transcript on Page 53, Lines  
6 15 through 25, the Court states -- I will have Mr. Clark  
7 read it with me -- it's the only copy I have -- the Court  
8 states that:

9 "The issue at the present time is not whether  
10 or not the Court should have signed the order. The order  
11 has been signed. The question is: Has he wilfully and  
12 knowingly violated the Court's order? It is crystal clear  
13 that he has. There is no indication that he did not under-  
14 stand the order. There is no indication that he misinterpreted  
15 the order and that there is every indication that he wilfully  
16 violated the order; therefore, I find him in contempt," and  
17 I quoted from Page 53 of the transcript.

18 I respectfully submit to the Court that this  
19 is not the question. Now that the question of illegal  
20 evidence has arisen, especially, but the question is this:  
21 Has the witness refused without just cause shown to comply  
22 with an order of the Court, and for that I cite 28 U.S. Code  
23 Section 1826A and Gelbhart against the United States 408 U.S.  
24 41 at Page 45.

25 Then the Gelbhart case, it was specifically

1 held, specifically held that as follows, at Page 60, 408 U.S.  
2 60, the general rule is illustrated in Blue, which is the  
3 case they are referring to, the United States against Blue,  
4 384 U.S. 251, is that a defendant is not entitled to have  
5 his indictment dismissed before trial simply because the  
6 Government has acquired incriminating evidence in violation  
7 of the law even if the tainted evidence was presented to the  
8 Grand Jury.

9  
10 But that rule has nothing whatever to do with  
11 the situation of a Grand Jury witness who has refused to  
12 testify and attempted to defend the subsequent charge of  
13 contempt. So that there is a big issue here as to whether  
14 this witness is in contempt, as I contend, and the issue is,  
15 does he have just cause, and illegal search and seizure is  
16 just cause, and he is entitled to a hearing to show that.

17 And Gelbhart against the United States  
18 specifically so holds.

19 THE COURT: But I thought I made it perfectly  
20 clear that the order I issued for him to give exemplars  
21 pertain to a comparison of those exemplars with the with-  
22 drawal slip at the bank.

23 The question as to whether or not the Government  
24 can also use those exemplars to compare them with the alleged  
25 illegal seizure of the note remains open.

Now, I carefully defined that in the October 5,



1 1976 hearing.

2 MR. HERRMANN: However, your Honor, I would  
3 like to speak to that. I think that also is mistaken in  
4 view of this rule, because --

5 THE COURT: Let's try it this way. Assuming  
6 that the note was seized illegally and I suppress it, how  
7 is that a defense to his refusal to give exemplars with  
8 respect to another specimen that was not illegally --

9 MR. HERRMANN: Number one, your Honor, there  
10 has been no establishment of where the other specimen came  
11 from. That's number one. The U. S. Attorney says that he  
12 heard from somebody in the FBI who heard from somebody else  
13 that this withdrawal slip was found in the bank. That's not  
14 evidence of anything. That's number one.

15 Number two, you can't use directly or indirectly  
16 what you get from an illegal search, so you can't use the  
17 illegal material plus you can't use the fruits of it.

18 In other words, if --

19 THE COURT: How could these notes, even if  
20 illegally seized, be the fruits of an illegal search at the  
21 bank where the evidence as set forth by the assistant U. S.  
22 Attorney is that the robber left the note, left the withdrawal  
23 slip at the bank with a teller, how could that possibly  
24 be illegal?

25 MR. HERRMANN: No. If that's so, which I

1 don't concede they have ever proved that, because we don't  
2 know; however, if that is so, if they haven't got the note,  
3 assuming that you suppress it, they haven't or they can't  
4 use it because it's a proper question on the contempt  
5 proceeding, aside from suppression, assuming they can't  
6 use it, there is nothing to connect him at all to this.

7  
8 Why call him on the withdrawal slip? Why  
9 not call me, why not call somebody else? You have no way  
10 of -- why pick him out of the air, as was said in re: Grand  
11 Jury proceedings in Harrisburg, Pennsylvania, 450 Fed. 2nd,  
12 199 at Page 210, the Government should be prevented from  
13 forcing the witness to give evidence that would not be  
14 asked for but for the illegal search.

15 THE COURT: We have been through all that --

16 MR. HERRMANN: I am just --

17 THE COURT: -- (continuing) October 5th.  
18 What we are here this morning is solely as to whether or  
19 not your motion with respect to the notes should provide  
20 further business for the Court; in other words, I have  
21 ordered this witness to submit himself to the Grand Jury  
22 to supply exemplars to compare with the withdrawal slip.

23 I do not wish reargument on that. You have  
24 already filed a notice of appeal on that and we will proceed  
25 now to the remaining question, and that is: Can the Government  
compare the exemplars to the note?



1 MR. HERRMANN: My answer, your Honor, is no,  
2 because it seems that the Court is taking the position that  
3 there are two questions here, and there is only one question.

4 There is only one question, and the question  
5 is: Can the Court on the petition of the executive depart-  
6 ment sentence a witness who was the victim of an illegal  
7 search and seizure to jail for refusal to participate in the  
8 exploitation of that crime and in violation of the Fourth  
9 Amendment of the Constitution of the United States?

10 There is only one question.

11 THE COURT: I already overruled you with  
12 respect to the withdrawal slip.

13 MR. HERRMANN: All right. I just wanted to  
14 make it clear on the record.

15 THE COURT: Now we get to the note.

16 MR. HERRMANN: That's my argument as to the  
17 note. There is only one question, the whole thing goes  
18 together. The whole thing goes together.

19 THE COURT: What do you have to say, Mr.  
20 Clark?

21 MR. CLARK: It seems to me that U. S. versus  
22 Colandra is on point.

23 I think that the question of the search and  
24 seizure should not be litigated now. There is a perfect  
25 remedy at such time when the Grand Jury will return an

1 indictment, and maybe they won't.

2 THE COURT: Do I understand counsel to have  
3 no other cases to present to the Court but U. S. versus  
4 Colandra and the Gelbhart case as leading cases?

5 MR. HERRMANN: I have other cases.

6 THE COURT: Do you have it in brief form  
7 or --

8 MR. HERRMANN: I can cite them to the Court.

9 THE COURT: All right.

10 MR. HERRMANN: Gelbhart against the United  
11 States, which affirms in re Grand Jury proceedings, Harrisburg,  
12 Pennsylvania, which is 450 Fed. 2nd, 119, the two leading  
13 cases on it have modern application.

14 The other leading case on illegal search and  
15 seizure, in fact, the basic leading case is Silverthorne, --  
16 with an "e" on the end of it -- Silverthorne Lumber Company  
17 against the United States, 251 U. S. 385, which is cited --

18 THE COURT: Just one moment --

19 MR. HERRMANN: Which was cited with approval  
20 in Nardone against the United States, 308, U. S. 338 at Page  
21 340, for the proposition that direct methods and indirect  
22 are also forbidden.

23 The leading exposition on illegal search and  
24 seizures, which I would request your Honor to read, and which  
25 has been cited time and time again, the dissenting opinions



1 of Mr. Justice Brandeis and Mr. Justice Holmes in the case  
2 of Olmstad against the United States -- it's in the Supreme  
3 Court Reporter, in 48 Supreme Court. I haven't got the  
4 official citation at my fingertips.

5 48 Supreme Court 569, but I have to find the  
6 official one. We can come back to that.

7 I have an extra copy of the dissent.

8 THE COURT: Thank you.

9 MR. HERRMANN: That's the Brandeis and Holmes.  
10 I would also like the Court to take under consideration, in  
11 addition to this, in connection with the affidavits of the  
12 Assistant U. S. Attorney, the Code of Professional Responsibility,  
13 D. R. 7-1023, D. R. 7-103 B, D. R. 7-106C, 3 and 4, and also  
14 the professional responsibility report of the joint conference,  
15 44, American Bar Association Journal 1159 at 1218 and A. B. A.  
16 opinion, 150, which is in 1936, and in connection with that I  
17 would ask the Court to refer to the statements of Judge  
18 Friendly as to the responsibilities of the United States  
19 Attorney in Grant against the United States 282, Fed. 2nd,  
20 165, which is the Second Circuit in 1960.

21 As to the fruits of the lawful search, of  
22 course, Map against Ohio, with which we are all familiar,  
23 367 U. S. 643, at 659.

24 One other point I would like to present,  
25 although your Honor has ruled on it, and I know you have

1 ruled on it, and just will take me a minute, that it's been  
2 held since ancient times that the Grand Jury is a judicial  
3 inquiry and a part of the judicial process, and this from what  
4 we have developed here appears to be an executive proceeding  
5 and not judicial, the Grand Jury foreman doesn't know what's  
6 going on, the U. S. District Attorney makes affidavits on  
7 hearsay, he doesn't reveal the source of his hearsay.

8 The question of the illegal search was  
9 suppressed until the eleventh hour, and I think the whole  
10 proceeding was, as it went along, until it developed last  
11 time, it was subterfuge. We got no information.

12 Now, one other thing, in the Mara case,  
13 Dinesio case, which is so heavily relied upon, in the Mara  
14 case in the note, the Court notes that the writings were in  
15 the Grand Jury's possession and in the Dinesio case, which  
16 was a wiretapping case, and the Grand Jury wanted voice  
17 exemplars, the wiretap which was legal, was done pursuant  
18 to a warrant, was placed as an exhibit before the Grand  
19 Jury, before the questions, so in both those cases, differ  
20 considerably from this.

21 I think that by these proceedings the civil  
22 rights of my client are being woefully abused. I think  
23 that the subpoenas issued and the suppression of all of  
24 this information have injured him, and I think the capias  
25 was issued with false allegations and also with suppression,



1 and I think his civil rights have been gravely injured.

2 As I requested your Honor to reconsider, that  
3 is denied, and the only thing that I can say is that I have  
4 filed the appeal, I will process it promptly, and I ask for  
5 the stay to continue until the appeal is disposed of.

6 THE COURT: Mr. Clark.

7 MR. CLARK: The only case really that I would  
8 like to cite in addition to Colandra is in re Mellilo,  
9 529 Fed. 2nd, 770, which is a Second Circuit case, and  
10 they state specifically that citing Colandra for authority,  
11 it had been held that the Grand Jury may ask questions based  
12 on evidence seized in violation of the Fourth Amendment.

13 THE COURT: Let's put things in perspective  
14 here. I have already ruled that the witness must submit  
15 himself to the Grand Jury to supply handwriting exemplars  
16 and be fingerprinted with respect to the withdrawal slip  
17 that was left at the bank by the robber.

18 The question left open this morning was: Can  
19 the exemplars and the fingerprint evidence also be compared  
20 to a note that was found either in or near the residence of  
21 the witness, in light of the claim of the witness that the  
22 note was illegally seized.

23 Now, the Government apparently is taking the  
24 position that it need not show that the note was legally  
25 seized but that even assuming it was illegally seized, that

1 the Grand Jury can utilize this evidence in their considera-  
2 tion of returning an indictment with respect to an armed  
3 robbery; is that your position?

4 MR. CLARK: Exactly. We do not concede there  
5 was an illegal search. I am saying, as you pointed out, it  
6 makes no difference from our point of view.

7 THE COURT: My position right now is merely  
8 to determine as a matter of law, even assuming the illegality  
9 of the seizure, the right of the Grand Jury to have that  
10 note so that it could compare it with the handwriting of the  
11 witness; is that correct?

12 MR. CLARK: That's correct.

13 THE COURT: I will rule on the issue as a  
14 matter of law and I will reserve.

15 The question now is that at this time, at  
16 least from my point of view, he is in contempt of the order,  
17 that is the order that he submit himself for handwriting  
18 exemplars and fingerprints to be compared with a withdrawal  
19 slip that was left at the bank by the robber and handed to the  
20 teller.

21 Where do we go with respect to that part of  
22 my order which in my opinion he has clearly violated?

23 MR. CLARK: Yes, I think that Mr. Meadows is  
24 in contempt. Your Honor has held him in contempt and I think  
25 that bail, pending an appeal to the Second Circuit would be



1 inappropriate.

2 The Mellilo case states that bail in a proceed-  
3 ing of this nature is inappropriate unless it's clear that  
4 the appeal is not frivolous. I think from all the proceedings  
5 that have gone here, quite clearly the appeal with respect to  
6 that portion of the order is frivolous.

7 THE COURT: What is the present status of the  
8 Grand Jury with respect to this investigation? Are they  
9 in session?

10 MR. CLARK: They are not. They come in  
11 approximately every three weeks.

12 THE COURT: So that they are due back --

13 MR. CLARK: It would be somewhere in early  
14 November, I would think. We don't have a definite schedule.  
15 We summon them in when the need arises.

16 THE COURT: When do you intend to call them  
17 back? Let me tell you what I have in mind. I will grant  
18 him a stay of the order of commitment that I entered until  
19 the time the Grand Jury resumes its investigation of this  
20 robbery; in other words, I will give him a chance to purge  
21 himself at that time, but obviously, he can't purge himself  
22 now if I incarcerate him, because the Grand Jury is not  
23 sitting.

24 MR. CLARK: He can purge himself by furnishing  
25 the exemplars, your Honor.

1  
2 THE COURT: I think I would prefer to do  
3 it by a date certain.

4 Now, would you believe that your investigation  
5 will continue in early November of this robbery?

6 MR. CLARK: An approximate time --

7 THE COURT: All right. The Court will reserve  
8 decision on the issue as the Court frames it. I see no issue  
9 whatever with respect to the violation of the Court's order  
10 by this witness with respect to the withdrawal slip.

11 I granted a stay on October 5th, until this  
12 morning at ten o'clock with respect to that aspect of the  
13 order. Now, at that time I stated I would order a stay until  
14 the witness has an opportunity to present the matter to the  
15 Court of Appeals, which I take it can be done within the  
16 next few days, and thereafter, I stated I will order a stay  
17 of the Court's order until ten o'clock Tuesday of next week,  
18 noOctober 12th.

19 Obviously, counsel is having some difficulty  
20 in getting this matter before a panel of the Judges. I will,  
21 therefore, order a stay until November 1st at 12 noon, at  
22 which time the witness shall present himself to the Marshal  
23 in New Haven for commitment during the life of the Grand  
24 Jury, unless he purges himself of the contempt order prior  
25 thereto.

If he does not purge himself prior thereto and



1 counsel wishes to pursue this matter on appeal and obtain a  
2 further stay, that stay must be obtained from the Court of  
3 Appeals.  
4

5 The Grand Jury is investigating an armed  
6 robbery, and I see no reason why that investigation should  
7 be delayed beyond November 1st by the appellate process  
8 unless the Court of Appeals so orders.

9 In my view, I have given him plenty of time  
10 to either purge himself or to obtain relief from the Court  
11 of Appeals by my order delaying commitment until November  
12 1st at 12 noon.

13 I, therefore, again order the witness to  
14 appear before the Grand Jury and provide handwriting  
15 exemplars and fingerprints so that those handwriting  
16 exemplars and fingerprints may be compared to the withdrawal  
17 slip left at the bank by the robber.

18 Whether or not the Government can compare the  
19 exemplars and fingerprint specimens to the note, I reserve  
20 on that question.

21 MR. CLARK: May I request a slight  
22 modification of your ruling, your Honor? I think it's  
23 impractical to have the witness provide those exemplars in  
24 front of the Grand Jury, and I think, as we requested last  
25 time, and as your Honor agreed with us, the order would be  
couched in terms of providing them to an agent of the Federal

1 Bureau of Investigation, perhaps in the Marshal's office,  
2 who would be acting as the agent of the Grand Jury.

3 THE COURT: Yes. My order did say that the  
4 witness should comply with the request of the Foreman to  
5 provide him with handwriting exemplars and major case  
6 prints in the manner recommended by the Foreman, so these  
7 exemplars and prints can be used before the Grand Jury in  
8 their investigation. That order still is incorporated in the  
9 order I again issued this morning.

10 MR. CLARK: Thank you.

11 MR. HERRMANN: May I correct the record a  
12 minute, your Honor?

13 Your Honor mentioned this is an investigation  
14 of an armed robbery. It's not. It's not an armed -- there  
15 was no arms or weapons of any kind so far as I understand.  
16 It's an investigation of a purported bank robbery but not  
17 armed robbery.

18 One other thing --

19 MR. CLARK: I think it's semantic, your Honor.  
20 The note said: "I will kill you if you don't give me money, "  
21 essentially, so there was show of violence --

22 MR. HERRMANN: I would like to put my objection  
23 on the record that the appeal is frivolous. I never took a  
24 frivolous appeal in my life and I am not going to start now.

25 THE COURT: The record so notes I did not



1 concur in Mr. Clark's characterization. I will leave it  
2 to the Court of Appeals to decide.

3 MR. HERRMANN: May I have the transcript  
4 back?

5 THE COURT: Yes.

6  
7 (Whereupon, this hearing was concluded.)  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

----- -X  
:  
UNITED STATES OF AMERICA

- versus -

Criminal Action

MARION MEADOWS

:  
:  
No. N-76-342  
:  
----- -X

United States Court House  
New Haven, Connecticut  
October 28, 1976

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

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1  
2 THE COURT: In the case of the United States  
3 versus ~~read~~ ~~ws~~, are the parties ready to proceed?

4 MR. CLARK: Yes, your Honor.

5 MR. HERRMANN: This is the application to the  
6 Court.

7 THE COURT: You may proceed.

8 MR. HERRMANN: Right, your Honor. Simply, I was  
9 notified by the United States Court of Appeals that the soonest  
10 they can hear my motion for the emergency stay is November 9th  
11 and that they're putting it on the calendar for that date and  
12 the U. S. Court of Appeals requested that I request this Court  
13 to extend the stay which you had granted to November 1st to  
14 November 9th -- or until they decide the motions, not the ap-  
15 peal; till they decide my motion for the stay -- and that I would  
16 make such request to you and then advise the U. S. Court of Ap-  
17 peals. They wanted me to advise them of your decision.

18 THE COURT: You say they advised you. How did  
19 they do that?

20 MR. HERRMANN: The Clerk of the U. S. Court of  
21 Appeals, Mr. Arthur Heller, telephoned me yesterday, and he said  
22 that they had this problem because of the holiday or something,  
23 that they couldn't put the matter on until November 9th for a  
24 hearing, and that they would -- they requested that I ask this  
25 Court -- you -- for a stay until the 9th or until they decide

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1  
2 it and that I should get back to them.

3 I called your chambers yesterday and spoke with  
4 Miss Peck and then I spoke with her again this morning, and  
5 then I notified Mr. Heller, again of the district court, that I  
6 was coming up here and making the motion to you, as I have, and  
7 then as soon as you make your decision I have to telephone him  
8 and let him know what the decision of this Court is. If it's  
9 in the affirmative, that will be -- end the matter as far as  
10 they're concerned. If it's in the negative, then they will  
11 proceed down there.

12 THE COURT: Mr. Clark.

13 MR. CLARK: Your Honor, I oppose this motion  
14 simply because I think it's filed for the purposes of delay.  
15 This witness has been under this order since at least October  
16 12th and it's a passage of more than two weeks before this  
17 simple motion for a stay has been filed. I think it could have  
18 been filed a long time ago -- the matter resolved. I think  
19 any further delay just reduces the power of the grand jury to  
20 conduct its investigation and erodes the authority of this  
21 Court and its contempt powers.

22 THE COURT: Well, actually, my intention was  
23 that if the witness exercised due diligence in appealing my  
24 order that he should not be committed during the interim. From  
25 what I hear this afternoon, Mr. Herrmann has proceeded with due



1  
2 diligence, so I will grant the order until November 9th. At  
3 which time, I suppose, the Court of Appeals will --

4 MR. HERRMANN: Well, yes, your Honor. I put it  
5 in there to bring it to your attention, but you didn't have  
6 time to read it all, so you can make it --

7 THE COURT: Yes, I know. Put it in until --

8 MR. HERRMANN: You can conform it to how you  
9 want it. How you want it. I said until November 9th or until  
10 the Court of Appeals decides the emergency motion, which would  
11 be the best order. But if you want to change that --

12 THE COURT: I will sign it that way. You may  
13 have a stay until November 9th or until the United States Court  
14 of Appeals for the Second Circuit decides the emergency motion  
15 for a stay of commitment now pending before it.

16 MR. HERRMANN: Thank you. And I have your per-  
17 mission to so notify the U. S. Court of Appeals.

18 THE COURT: Well, it's going to be official in  
19 about 30 seconds. I have signed the order.

20 MR. HERRMANN: Thank you.

21 -ooOoo-

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

IN RE GRAND JURY PROCEEDINGS:       :  
  :  
MARION E. MEADOWS                    :  
  :

DOCKET NO. 76-1490

GOVERNMENT'S RESPONSE TO MOTION  
FOR STAY OF COMMITMENT AND TO CONTINUE  
NON-SURETY BOND PENDING APPEAL

F A C T S

This is a response to a motion for a stay of commitment and bond pending appeal from an order of the District Court (Zampano, J.) find Marion Meadows in contempt for refusal to provide fingerprints and handwriting exemplars as ordered by a grand jury.

On August 3, 1976, the Union Trust Company on High Ridge Road in Stamford, Connecticut was robbed by a lone, black male who presented a handwritten demand note and withdrawal slip to a teller. The robber fled with \$1,750.00 and the note, leaving the withdrawal slip in the bank. Witnesses observed the license plate of the getaway car which was traced to a home in Greenwich. Inquiry there established that the owner was travelling out of state and had loaned his car to



Meadows. Police and FBI agents arrived at Meadows' home within two hours of the robbery and found the car in the driveway. They used a loudspeaker to order the occupants out of the house but received no response. The officers thereupon entered the home which they found unoccupied. During a subsequent search of the grounds they found the demand note in a small outdoor fireplace located about five feet from the house. Later that evening Meadows, accompanied by his attorney, surrendered himself to authorities.

Meadows was subpoenaed to appear before a grand jury in New Haven, Connecticut on August 31, 1976, for the purpose of obtaining major case fingerprints and handwriting exemplars from him to compare with the withdrawal slip left at the bank and the demand note at Meadows' home. Between the date of service of the subpoena and August 31, the grand jury was rescheduled for September 6 and Meadows was so notified by mail. He apparently did not receive this notification and did appear on August 31, at which time the clerk advised him to await further notification. He did not appear on September 6.

Meadows was then subpoenaed to the next available grand jury, sitting in Hartford on September 17. At that appearance he was ordered by the grand jury foreman to provide fingerprints and handwriting samples, which order he refused.

He was then taken before Chief Judge Clarie and upon application of the Government an order compelling production of the exemplars was entered.

There is some dispute, the resolution of which is immaterial to the issues herein, over what occurred immediately thereafter. The Government contends that Meadows expressed a continuing intention not to comply with the order if taken back before the grand jury. Meadows does not agree this is so, although his subsequent actions support that view. In any event, the Government, acting upon its perception of Meadows' intent, did not bring him back before the grand jury but rather in the presence of his counsel served him with another subpoena for September 27 in New Haven, inasmuch as the term of the Hartford grand jury expired the next day and its contempt powers were negligible.

Meadows failed to appear on September 27, a capias was obtained on October 1, and he was arrested on October 4. He was brought to New Haven, served with another subpoena for October 5, and then taken before Magistrate Latimer who released him on a two thousand dollars (\$2,000.00) non-surety bond.

On October 5 Meadows appeared with counsel and made an oral motion to quash the subpoena, essentially on the ground that no showing had been made that the exemplars sought were relevant to a legitimate grand jury inquiry. (tr. 10/5 p. 1-8).

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The Government, while not conceding that such a showing is required in all cases, did submit an affidavit attesting to the relevancy of the evidence and the use to which the exemplars would be put (copy annexed hereto as Ex. 1; tr. 10/5 p. 17-21). Meadows thereafter expanded the grounds of his objection to the subpoena, contending that the handwritten note found at his home was illegally seized and that he was entitled to a hearing on that issue before he could be compelled to produce exemplars for comparison with the seized item (tr. 10/5 p. 21-22).

Judge Zampano noted two issues and ruled accordingly. First, the motion to quash on the basis of the reasonableness and relevancy of the witness' appearance before the grand jury was denied, in view of the Government's representations in Court and affidavit (tr. 10/5 p. 27). Secondly, with respect to the search and seizure claim, the Court noted that there was no search involved with the withdrawal slip left at the bank and that therefore there was no basis for Meadows' refusal to provide exemplars for comparison with that document (tr. 10/5 p. 36). With respect to whether a hearing on the legality of the seizure of the note was needed as a predicate to compelling production of exemplars for comparison with it, the Court set October 12 for argument of that issue, in the meanwhile refusing to quash the subpoena and in effect ruling

that exemplars must be produced at least for comparison with the withdrawal slip.

Meadows was thereafter taken before the grand jury, ordered by the foreman to produce the exemplars, and refused (tr. 10/5 p. 39-41). An additional affidavit (Ex. 2), an application for an order compelling production of the exemplars (Ex. 3) and a proposed order (Ex. 4) were submitted to the Court, which order the Court signed (tr. 10/5 p. 45). Meadows was returned to the grand jury, ordered again to give the exemplars, and again refused (tr. 10/5 p. 47). Judge Zampano thereupon found him in contempt (tr. 10/5 p. 53), but granted a stay of commitment until the hearing on October 12 (tr. 10/5 p. 54).

On October 8 Meadows filed a notice of appeal of Judge Zampano's order of October 5. On October 12 further hearings were held on whether the exemplars, not yet provided but ordered on October 5, could be compared with the note seized at Meadows' home. After argument, Judge Zampano reserved ruling (tr. 10/12 p. 13) and granted a further stay of the order of commitment to November 1 (tr. 10/12 p. 14).

The motion for bond pending appeal was filed October 27 and argument has been set for November 9. As of this writing, the District Court has not ruled on the question of whether the exemplars, when or if received, can be compared to the note.



A R G U M E N T

The language of 28 U.S.C. § 1826(b) is crystal clear that no person confined pursuant to § 1826(a) shall be admitted to bail pending appeal if it appears that the appeal is frivolous. See also, In re Millow, 529 F.2d 770, 774 (2d Cir. 1976). The consideration on this motion, therefore, is whether Meadows' appeal from the District Court's order of October 5 is or is not frivolous. While it should be noted that as of this writing the Court's ruling applies only to compelled production of handwriting and fingerprints for comparison with the deposit slip left at the bank, it is submitted that the appeal would be equally frivolous even if the order of October 5 encompassed both the deposit slip and the note.

The first document, left at the bank by the robber, presents no issue of search and seizure whatsoever. Meadows' Fourth Amendment claim pertaining to it is therefore specious. The compelled production of the exemplars for comparison with this document is clearly not affected in any way by how other items may have been obtained. Consequently there is no just cause for the refusal, on the Fourth Amendment grounds raised, to comply with the grand jury's order.

With respect to comparison of the exemplars with the note seized at the home, it has conclusively been established

that search and seizure claims cannot be interposed as a defense to a finding of contempt for refusal to cooperate with an inquiring grand jury, and that no hearing into the legality of the seizure of evidence before a grand jury is required as a predicate to a finding of contempt. United States v. Calandra, 414 U.S. 338 (1975). See also, Smith v. United States, et al, 423 U.S. 1303, 1306 (1976); In re Millow, 529 F.2d 770 (2d Cir. 1976); United States v. Turk, 526 F.2d 654, 666 (5th Cir. 1976), U.S. App. Pending; In re Weir, 495 F.2d 879 (9th Cir.), cert. denied, 419 U.S. 1038 (1974). Meadows' Fourth Amendment claims are therefore in part irrelevant and taken as a whole, devoid of merit.

The original grounds of objection to the subpoena itself, that of a lack of showing of reasonableness and relevance, are equally insubstantial. First, no such showing is required in this Circuit. United States v. Doe, 457 F.2d 895, 899-900 (2d Cir. 1972), cert. denied, 410 U.S. 941 (1973). See also, United States v. Dionisio, 410 U.S. 1, 15 (1972) and United States v. Mara, 410 U.S. 19, 22 (1972). Second, although no such showing is required, it was nevertheless made in this case by the Government's affidavit, thereby countering Meadows' objections which were based on the Third Circuit's exercise of its supervisory powers in In re Grand Jury Proceedings, 486 F.2d 85 (3rd Cir. 1973). Even that opinion

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was clarified in In re Grand Jury Proceedings, 507 F.2d 963 (3rd Cir. 1975), cert. denied, 421 U.S. 1015 (1975), to make clear that only a minimal showing was needed. The Government has therefore gone far beyond what is required.

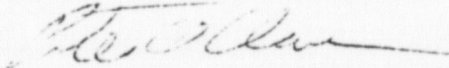
C O N C L U S I O N

For the foregoing reasons it is respectfully submitted that Meadows' appeal is frivolous, that bond pending appeal would be in direct contravention of the mandate of the contempt statute and the case law of this Circuit, and that failure promptly to enforce the District Court's order of October 5 would seriously erode the powers of the grand jury and the District Court.

Respectfully submitted,

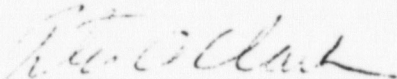
PETER C. DORSEY  
United States Attorney  
District of Connecticut

By

  
PETER A. CLARK  
Assistant United States Attorney

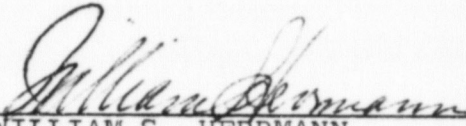
C E R T I F I C A T I O N

This is to certify that a copy of the foregoing Response was mailed postage pre-paid to William S. Herrmann, Esquire, 16 Oak Street, Stamford, Connecticut this 3rd day of November, 1976.

  
PETER A. CLARK  
Assistant United States Attorney

CERTIFICATION

This is to certify that a copy of the foregoing appendix was mailed postage prepaid to Peter C. Dorsey, Esq., U. S. Attorney, 270 Orange Street, P. O. Box 1824, New Haven, Ct. 06508 this 4th day of December, 1976.

  
WILLIAM S. HERRMANN